

# **Draft Environmental Assessment for the Whitefish Lake Watershed Project**



**June 13, 2017**



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## Abbreviations

CEIC	Census and Economic Information Center
DNRC	Montana Department of Natural Resources & Conservation
FLP	Forest Legacy Program
HCP	Habitat Conservation Plan
MCA	Montana Code Annotated
FWP	Montana Fish, Wildlife and Parks
MRMP	Multi-Resource Management Plan
TPL	The Trust for Public Land
USDA	U.S. Department of Agriculture
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service

## 1.0 PURPOSE AND NEED FOR ACTION

### 1.1 PURPOSE

The Whitefish Lake Watershed Project (Project) is a proposal by Montana Fish, Wildlife & Parks (FWP) and The Trust for Public Land (TPL) to conserve twenty-one sections (approximately 13,398 acres) of Weyerhaeuser property located northwest of Whitefish, Montana (Fig. 1). Under this proposal, TPL would acquire the entire project area from Weyerhaeuser by the end of September 2017. FWP proposes to purchase the Lazy Creek Conservation Easement (CE) on 16 sections (~10,218 acres) in two phases with a combination of federal and state funding. Phase 1 would likely be completed by the end of 2017 and Phase 2 would likely be completed by the end of 2018. The Montana Department of Natural Resources and Conservation (DNRC) would purchase the underlying fee ownership from TPL once the conservation easement is in place. The Bonneville Power Administration (BPA) would provide funding for purchase of the other five sections (~3,180 acres) in the Swift Creek drainage (Fig. 2). In exchange for their funding, BPA would retain a perpetual conservation easement on the five sections (Swift Creek Conservation Easement) to conserve important native fish habitat within the Swift Creek watershed. Ownership of the Swift Creek sections would be transferred to either DNRC or FWP. The BPA portion of this proposed project would serve as partial mitigation for fisheries losses resulting from construction of Hungry Horse Dam. ***This environmental assessment only evaluates the proposed FWP actions of purchasing the Lazy Creek Conservation Easement and the potential for FWP to assume ownership of five sections in the Swift Creek drainage. DNRC's potential actions are subject to their separate review and approval process.***

The primary objectives of the FWP-held Lazy Creek Conservation Easement currently being proposed on sixteen sections (~10,218 acres) are to:

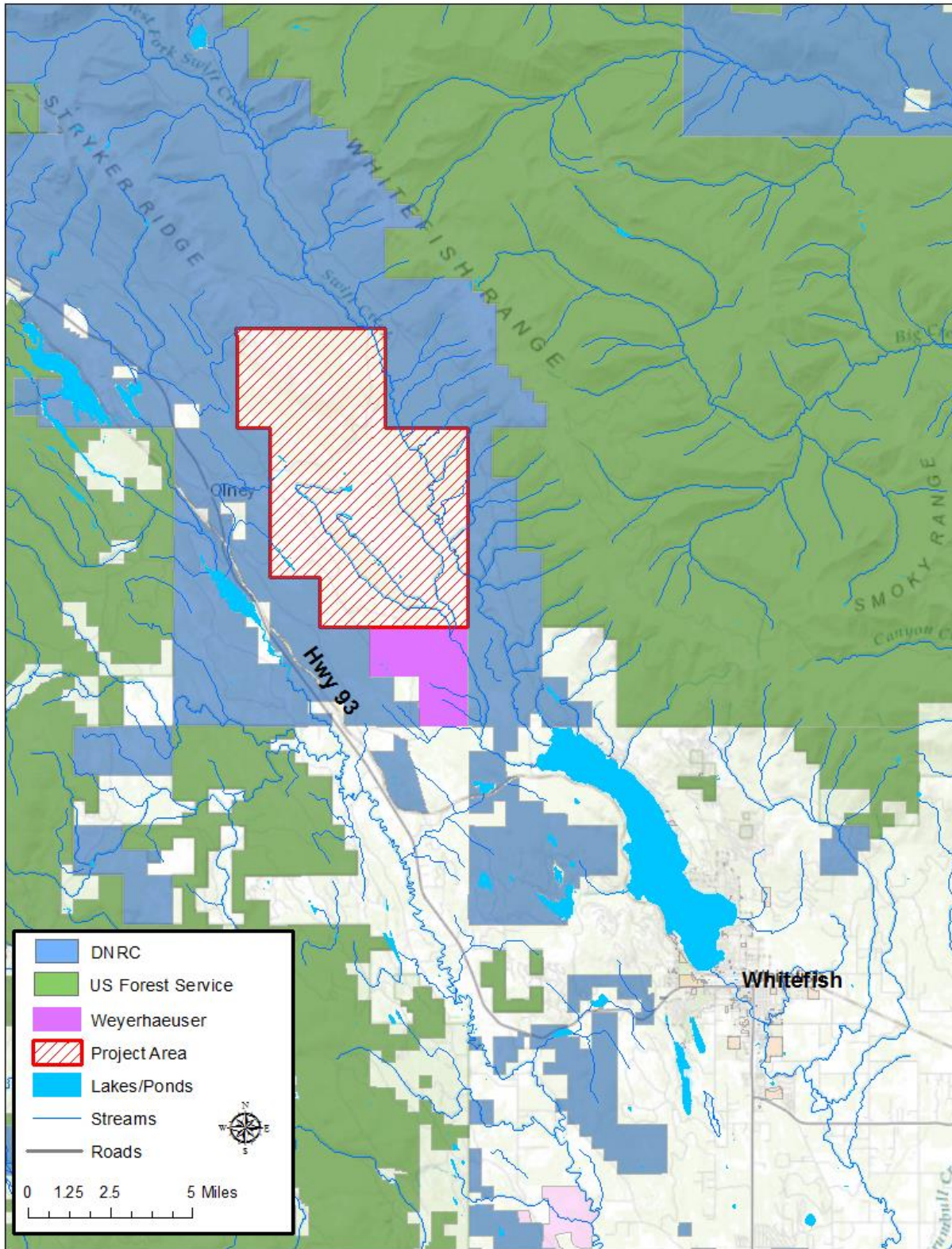
- Conserve important fish and wildlife habitat;
- Continue sustainable commercial forest management; and
- Maintain public recreation access into the future.

The primary objectives of the BPA conservation easement currently being proposed on five sections (~ 3,180 acres), under either DNRC or FWP ownership, are to:

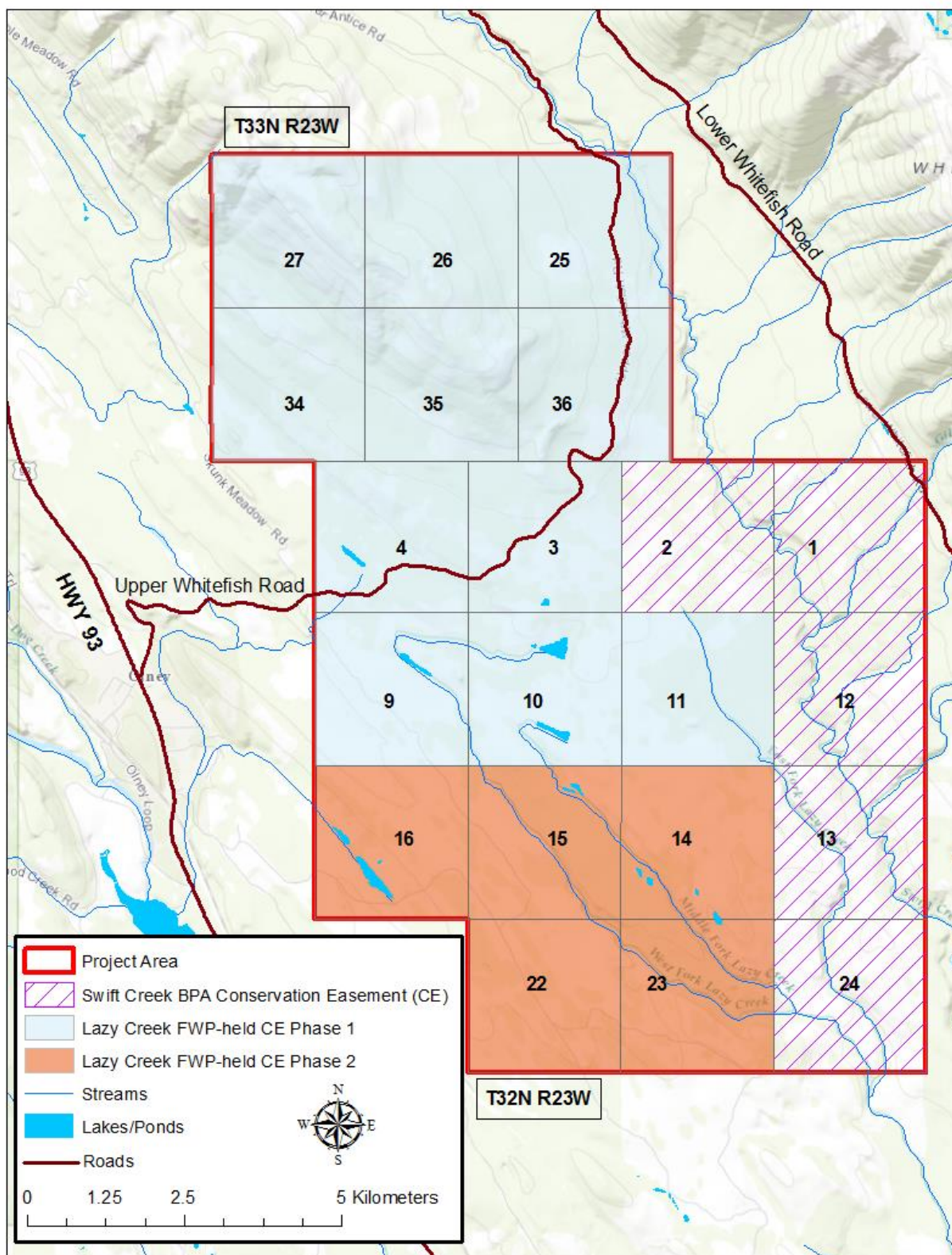
- To protect, conserve, and as appropriate, to allow for the restoration and maintenance of fisheries habitat on the property; and
- Maintain public recreational access into the future in a manner that does not impact fish and wildlife conservation values.

#### Location

The Project area is bordered on three sides by Department of Natural Resources and Conservation land and Weyerhaeuser land on the southeast border. The property is located approximately nine miles northwest of Whitefish, Montana (Fig. 1).



**Figure 1.** Project area showing distance from Whitefish, MT as well as surrounding Department of Natural Resources and Conservation (DNRC), U.S. Forest Service, Weyerhaeuser, and private land ownership.



**Figure 2.** Detailed project map showing the five sections to be funded by BPA and encumbered with a BPA conservation easement and the two phases of the proposed FWP-held Lazy Creek Conservation Easement on the other sixteen sections.

## **1.2 NEED FOR ACTION**

Weyerhaeuser, the current landowner, has decided to sell this 13,398-acre property, but has agreed to give TPL the first option to buy and conserve it. The Whitefish Lake Watershed Project would permanently protect important fish and wildlife habitat that is currently threatened by residential development. The Project area provides unique, high conservation-value habitats that support game and non-game species alike. This property and the surrounding DNRC and national forest land support elk, moose, mule deer, white-tailed deer, wolf, black bear, forest grouse and a variety of nongame species. Development of this area would mean the potential loss of these unique habitats, increased wildlife conflicts, degradation of water quality within the watershed, and the loss of economic benefits to the community through continued sustainable commercial forestry.

The Project area is unique for its low-elevation wetlands and meadows that provide critically important spring grizzly bear habitat that attract bears from many miles of surrounding state and federal lands. These same terrain features also make the area highly susceptible to fast-encroaching residential development that could spill over onto this undeveloped property and cause a significant rise in human-bear conflicts. Such development could increase mortality for individual grizzly bears as well as displace both grizzly bears and Canada lynx from critical habitat designated by the U.S. Fish and Wildlife Service (USFWS).

Swift Creek and its tributaries flow through the five sections that would be funded by BPA. These streams provide important spawning and rearing habitat for native bull trout and westslope cutthroat trout. Swift creek has been designated by the USFWS as critical habitat for the recovery of bull trout, a species listed as threatened under the Endangered Species Act. Development could threaten designated critical spawning and rearing habitat in this important stretch of Swift Creek. For westslope cutthroat trout, development would threaten the viability of a Conservation Population in Meadow Lake and potential Core Population in Swift Creek as identified in the Conservation Agreement for Westslope Cutthroat Trout in Montana (2007). Many of the wildlife and fish species mentioned above are also identified conservation priorities in Montana's 2015 State Wildlife Action Plan. Development of this property would likely impact all these resources.

Hunters and recreationists also use the Project area. The property has produced trophy white-tailed deer while also providing opportunities to hunt other big game and forest grouse species. The Upper Whitefish Road which passes across the northern portion of the Project area provides access to thousands of acres of DNRC and USFS land used by recreationists year-round. During the winter months, this road is not plowed, but groomed for snowmobile, dogsled, and other winter recreation uses, making it an extremely popular winter recreation destination for the public.

There are over 1,000 homes within a 5-mile radius of the Project and this number continues to increase. Subdivision and development activity in the local area has picked up considerably as the U.S. economy has rebounded since the 2008 recession. Flathead County, where the Project is located, is among the most rapidly growing counties in the state. Over the last five years, Flathead County's population has increased by nearly 6% while the population of Whitefish has increased by over 10%. With recent increased economic and population growth in the area, this conservation opportunity may never be offered again if we fail to complete this important project.

### **1.3 FUNDING**

BPA would provide the appraised value, approximately \$11.5 million (M), for purchase of five sections (~3,180 acres) in the southeastern portion of the Project subject to the Swift Creek Conservation Easement. The remaining 16 sections (~10,218 acres) would be placed under the proposed Lazy Creek Conservation Easement in two phases using a combination of U.S. Forest Service (USFS) Forest Legacy Program (FLP) funding, USFWS Habitat Conservation Plan (HCP) Land Acquisition Grant funding, hunter license dollars through FWP's Habitat Montana Program, and private funds provided by TPL. FWP and TPL have secured \$7M in FLP funding and \$2M in HCP funding for Phase 1 (~7,018.24 acres) and would anticipate closing on this phase by the end of 2017. We have requested the same amount from each program for Phase 2 of the Project and would add up to five sections of land (~3,120 acres) to the Lazy Creek Conservation Easement if and when funding becomes available. One million in Habitat Montana funding has been committed for each of the two Lazy Creek Conservation Easement phases. The balance of funds needed for the project would come from TPL.

### **1.4 RELEVANT AUTHORITIES, RELEVANT DOCUMENTS, AND OVERLAPPING JURISDICTIONS**

#### **1.4.1 Authorities**

**Montana Department of Fish, Wildlife & Parks (FWP):** FWP has the authority under state law (87-1-201 Montana Code Annotated [MCA]) to protect, enhance, and regulate the use of Montana's fish and wildlife resources for public benefit now and in the future. In 1987, the Montana Legislature passed HB526 which earmarked hunting license revenues to secure wildlife habitat through lease, conservation easement, or fee-title acquisition (87-1-241 and 242 MCA). The Habitat Montana Program, developed as a result of that legislation, provides direction to the Fish and Wildlife Commission for all of FWP's wildlife habitat acquisition programs (12.9.511 ARM).

**Montana State Statutes:** Section 76-6-201 MCA authorizes the application of conservation easements to protect "significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest." Section 76-6-206 MCA provides for the review of proposed conservation easements by local planning authorities to determine compliance with local growth policies. The proposed conservation easement would be submitted to Flathead County for their review in accordance with this requirement.

#### **1.4.2 Relevant Documents**

**1993 and 2006 Grizzly Bear Recovery Plans:** The Project is identified as a core recovery area in the USFWS 1993 Grizzly Bear Recovery Plan ([http://www.fws.gov/mountain-prairie/species/mammals/grizzly/Grizzly\\_bear\\_recovery\\_plan.pdf](http://www.fws.gov/mountain-prairie/species/mammals/grizzly/Grizzly_bear_recovery_plan.pdf)) and in the FWP Grizzly Bear Management Plan for Western Montana 2006-2016 (<http://fwp.mt.gov/fwpDoc.html?id=25772>).

2003 Montana Gray Wolf Conservation and Management Plan: A wolf pack has been denning on the Project area for over a decade. FWP obtained full authority to manage wolves in Montana upon the federal delisting of the Rocky Mountain gray wolf in May 2011. In preparation of assuming authority, Montana, Idaho, and Wyoming were required to develop conservation and management plans and adopt other consistent regulatory mechanisms in state law. The plan met that requirement and guides FWP management of the species.

<http://fwp.mt.gov/fishAndWildlife/management/wolf/management.html>

2015 State Wildlife Action Plan: The project area supports conservation priorities set forth in Montana's 2015 State Wildlife Action plan. It is one of only 14 geographic terrestrial focus areas identified in the plan as in greatest need of conservation.

<http://fwp.mt.gov/fishAndWildlife/conservationInAction>

2007 MOU and Conservation Agreement for Westslope and Yellowstone Cutthroat Trout in Montana: The Project area is occupied habitat for westslope cutthroat trout and a target for recovery efforts per a 2007 Memorandum of Understanding and Conservation Agreement for Westslope Cutthroat Trout and Yellowstone Cutthroat Trout in Montana that was signed by a host of government agencies, non-profit organizations, and other stakeholders.

<http://fwp.mt.gov/fwpDoc.html?id=28662>

2007 Whitefish City-County Growth Policy: The Growth Policy is an official County public document to help the public and elected officials identify goals and objectives, set priorities, and seek solutions to long term issues. The Growth Policy addresses seven elements (e.g. Natural Resources, Economic Development, Community Facilities, etc.) and proposes an implementation strategy and action plan. <http://www.cityofwhitefish.org/planning-and-building/long-range-plans.php>

2009 Revised Designation of Critical Habitat for Canada Lynx: Much of the Project area is identified as a core recovery area in the USFWS's 2000 Canada Lynx Conservation Assessment and Strategy, the 2005 Lynx Conservation Agreement between the U.S. Forest Service (USFS) and the USFWS, and the Revised Designation of Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx. <http://www.fws.gov/mountain-prairie/species/mammals/lynx/criticalhabitat.htm>

2010 Montana State Assessment of Forest Resources: This assessment identified "critical landscapes" for identifying where federal funding for private forestry assistance would be most beneficial. It was based on an evaluation of eleven different criteria to identify "critical landscapes." The Project is located in an area that was rated as the highest priority for forestland protection in the 2010 Montana State Assessment of Forest Resources.

<http://dnrc.mt.gov/Forestry/Assistance/SARS.asp>

2012 Revised Flathead County Growth Policy: The Growth Policy helps the public and elected officials identify goals and objectives, set priorities, and seek solutions to long term issues. The Growth Policy addresses twelve elements (e.g. Land Uses, Demographics & Housing, Economy, etc.) and proposes an implementation strategy and action plan.

[http://flathead.mt.gov/planning\\_zoning/growth\\_resolution2015a.php](http://flathead.mt.gov/planning_zoning/growth_resolution2015a.php)

### 1.4.3 Overlapping Jurisdictions

Forest Legacy Program: The USFS Forest Legacy Program is one of several national programs established to promote the long-term integrity of forest lands. Specifically, the intent of the FLP is to identify and protect environmentally important private forest lands that are threatened by conversion to non-forest uses. The overall goal of the Montana FLP is to conserve and enhance land, water, wildlife, and timber resources while providing for the preservation of Montana's working forest land. The Forest Legacy Program requires acknowledgement of the funding source in the conservation easement and development of a multi-resource management plan (MRMP) that ensures sustainable forest management into the future.

U.S. Fish & Wildlife Service: A portion of the appraised value of the proposed CE would be provided by a USFWS grant funds under its HCP Land Acquisition Grant Program, §10(a)(1)(B) of the Endangered Species Act. Funds are provided for acquisition of vital habitat for threatened and endangered fish, wildlife, and plant species, in this case grizzly bear and Canada lynx. Properties funded with HCP funds would be managed for the purpose of the HCP grant and may not be encumbered, disposed of in any manner, or used for purposes other than those for which it was acquired, without prior written approval of the USFWS-Region 6, Denver, Colorado.

Bonneville Power Administration: BPA is a power-marketing agency having legal obligations under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h (“**Northwest Power Act**”) to protect, mitigate, and enhance fish and wildlife habitat affected by the development and operation of Federal hydroelectric projects in the Columbia River Basin. Their program is guided by the purposes of the Northwest Power Act, the Fish and Wildlife Program adopted by the Pacific Northwest Electric Power and Conservation Planning Council under subsection 4(h) of the Northwest Power Act (16 U.S.C. § 839b(h)), and other environmental laws, including the Endangered Species Act, 16 U.S.C. §§ 1531-1544 (“**ESA**”). BPA has the authority pursuant to the Northwest Power Act, 16 U.S.C. §§ 839b(h) and 839f(a), the Federal Columbia River Transmission System Act, 16 U.S.C. § 838i(b), or the Bonneville Project Act, 16 U.S.C. §§ 832a(c) through (f), to acquire real estate or to assist in the acquisition and transfer of real property interests.

## 1.5 DECISION TO BE MADE

The decision that must be made is whether FWP *should move forward with the purchase of the proposed Lazy Creek Conservation Easement on up to 10,218 acres, and potentially also assume ownership of an additional 3,180 acres of land encumbered by a BPA-held Swift Creek Conservation Easement.* Following completion of the draft EA and review of the public comments received, the FWP Region One Supervisor will issue a decision notice that makes a recommendation to the FWP Fish and Wildlife Commission on a course of action. This course of action could be the Preferred Alternative, Secondary Alternative, or the No Action Alternative as described in Section 2.0 (Alternatives).

As with other FWP proposals that involve land interests over 100 acres or over \$100,000 in value, the FWP Fish and Wildlife Commission and the State Board of Land Commissioners

would make the final decisions on whether to approve the purchase of the CE, and potentially the acquisition of the five sections funded by BPA.

## **1.6 EARLY PUBLIC INVOLVEMENT**

FWP participated in a tour of the property with the Forest Legacy Program Subcommittee, part of DNRC's State Forest Stewardship Steering Committee, on August 12, 2016. The Project received support from the subcommittee and the full Steering Committee.

FWP released a scoping notice on May 24, 2017 to solicit public input on the proposed Project and requested the public's help in identifying any issues, concerns, or other information that FWP should consider when evaluating the opportunity to conserve this property.

## **1.7 ISSUES RAISED DURING PUBLIC SCOPING**

The public raised the following issues during the public scoping comment period:

1. This Project would not place under conservation easement all the contiguous Weyerhaeuser-owned sections in this area (Weyerhaeuser owns twenty-four sections and only twenty-one are part of this project) (Figure 1).  
**FWP response:** Initially, FWP and TPL tried to make all twenty-four sections part of the Project, but were not able to find additional funding (through federal or private means) to conserve the southern-most three sections as well as the twenty-one sections that make up the Project area.
2. The Project would be enhanced by developing public recreation areas with designated trailheads, parking, and information kiosks at both the Upper Whitefish Road access on Hwy 93 and the Lazy-Lupfer Road access on Lupfer Loop Road.  
**FWP response:** Both of these areas are outside of the Project area so FWP has no authority to make this suggestion part of our considered alternatives; however, we included language in the draft FWP-held Lazy Creek Conservation Easement that ensures the landowner would have the ability to grant new trail easements across the property.
3. The property should be actively managed and continue to provide wood fiber for the local timber industry. The best way to do this would be for the land to stay in private ownership.  
**FWP response:** The majority of the property (10,218 of the 13,398 acres) would be actively managed for sustainable timber harvest if this Project is implemented as proposed. Under Section 2.4 (Alternative Considered and Dismissed), we explain that the first option FWP and TPL explored was for a private timber company to own the entire property subject to the conservation easement terms and associated management plans, but we were not able to bring this option to fruition.
4. The land should remain on the tax rolls for Flathead County.  
**FWP response:** The alternatives we evaluate in Section 3.6 (Socioeconomics) include an alternative that would keep this land in private ownership and on the tax rolls. We

disclosed the effect of that alternative and of removing the land from the County tax rolls under DNRC ownership in that section of this document.

## 2.0 ALTERNATIVES

For this Project to be successful, all twenty-one sections must be acquired from Weyerhaeuser, placed under easement, and eventually owned by a long-term land manager comfortable with the terms of the conservation easements and associated management plans. TPL would purchase the entire Project from Weyerhaeuser, but TPL does not own or manage land for the long-term and will need to work with a suitable willing buyer capable of managing forest land under the terms of the conservation easements and management plans. Given these objectives, FWP has identified three alternatives to consider:

1. **Preferred Alternative: Conservation easement only on a portion of the Project** – FWP would hold the Lazy Creek Conservation Easement on up to 10,218 acres (sixteen sections) with the potential for DNRC ownership of the underlying fee (subject to DNRC’s review and approval process). FWP would hold no interest in the remainder of the Project because DNRC would take ownership of the remaining 3,180-acres (five sections) subject to a BPA conservation easement as agreed to between DNRC and BPA (subject to DNRC’s review and approval process);
2. **Secondary Alternative: Combination of conservation easement and fee ownership** – FWP would hold the Lazy Creek Conservation Easement on up to 10,218 acres (sixteen sections) as described in the Preferred Alternative. In addition, FWP would assume ownership of and management responsibility for the remaining 3,180 acres (five sections) subject to a BPA conservation easement as agreed to between the FWP and BPA; and
3. **No Action Alternative:** TPL would not purchase the property from Weyerhaeuser and FWP would hold no interest in the property.

Both the Preferred and Secondary Alternatives would protect important fish and wildlife habitat on the entire 13,398-acre property and allow sustainable forest management to occur on 10,218 of those acres. The main difference would be the ultimate owner and responsible party for the 3,180 acres encumbered by a BPA conservation easement for the five parcels in the Swift Creek drainage. BPA’s template conservation easement allows for compatible public access but limits management to only those activities that benefit fish and wildlife species and their habitats.

### 2.1 **PREFERRED ALTERNATIVE**

Under the Preferred Alternative, FWP would acquire the Lazy Creek Conservation Easement on 10,218 acres of the Project in two phases, and DNRC would own and manage the land subject to the easement terms. The first phase would cover approximately 7,018 acres (eleven sections) and the second phase would cover up to 3,120 additional acres (five sections), depending on the amount of funding available. The remaining 3,180 acres of the Project would be subject to a

BPA conservation easement and associated management plan with the underlying fee ownership held by DNRC. Both potential actions by DNRC would be subject to their agency review and approval process and are not the subject of this document.

This approach is preferred by FWP because DNRC was a historical owner of the property and they manage the surrounding Stillwater State Forest so it would be more efficient for DNRC to have seamless ownership in this area. DNRC has staff and equipment stationed at their Stillwater Unit office which is located just one mile from the Lazy Creek portion, and four miles from the Swift Creek portion of the proposed Project.

The following is a brief summary of the rights each party would retain or receive under the terms of the proposed Lazy Creek Conservation Easement. See Appendix A for a copy of the draft FWP-held Lazy Creek Conservation Easement.

For the proposed FWP-held Lazy Creek Conservation Easement, the landowner would have the following retained rights for the property:

- 1) Conduct forest management and improvement activities, including commercial timber harvest, consistent with the approved Multi-Resource Management Plan (MRMP);
- 2) Manipulate vegetation, conduct stream restoration projects, or engage in other activities for the primary purpose of enhancing or maintaining fish and wildlife habitat;
- 3) Use, maintain, improve, and repair existing roads, construct new roads, and pave roads where the landowner has secured those rights prior to this proposed conservation easement, all subject to the MRMP;
- 4) Repair, renovate, remove, maintain, or replace nonresidential improvements existing at the time of the grant of the easement and construct, remove, maintain, renovate, repair, or replace timber platforms, bridges, culverts, road ditches, and other structures necessary for land management purposes;
- 5) Construct or permit the construction of utility lines and pipelines within existing roads, or in other situations but then only with prior approval by FWP;
- 6) Use agrichemicals, fertilizers and biological agents for silvicultural purposes and for control of noxious weeds;
- 7) Regulate public use of the property to address safety of the public, landowner or their contractors. Limitations on the timing, location or amount of public use must be described in the MRMP or approved by FWP prior to implementation;
- 8) Control road access and use. May grant 3<sup>rd</sup> party permanent or temporary, non-exclusive access rights to cross the property on existing roads, on new roads if approved by FWP, or on new trails after notifying FWP;
- 9) Extract sand, gravel, rock and road fill material for the construction and maintenance of roads on the property;
- 10) Allow and collect compensation for day use by commercial outfitters provided that the public also has the opportunity for concurrent recreational use.

FWP would acquire the following rights under the proposed Lazy Creek Conservation Easement:

- 1) Enter the property to monitor compliance of the easement terms and rights to observe, study, and make scientific observations of the property's fish, wildlife, habitat, and ecosystems;
- 2) Establish and maintain vegetation monitoring transects and enclosures upon prior written notice;
- 3) Prevent any activity on or use of the land that is inconsistent with the conservation easement and require the landowner to restore any areas or features of the land that may be damaged by landowner uses or activities that are inconsistent with the conservation easement; and
- 4) Access to and on the land for noncommercial recreation on behalf of the general public.

The proposed Lazy Creek Conservation Easement would also restrict:

- 1) Destruction, removal, control and manipulation of native vegetation except for forest management activities as allowed by the conservation easement;
- 2) Manipulation of wetlands or the use or withdrawal of surface or ground water in any manner that would adversely affect the conservation values;
- 3) Future divisions of the property;
- 4) Construction of residential buildings or any other buildings or structures not specifically allowed for forest management on the property;
- 5) Withdrawal of surface or ground water except as necessary for emergency firefighting activities;
- 6) Use of chemical and biological agents except as provided above;
- 7) Exploring for, developing, mining, producing or otherwise extracting any minerals, oil, natural gas, coal-bed methane or other hydrocarbon resources, whether on or under the surface of the project lands
- 8) Use of the land for shooting preserves, wildlife propagation, and related activities;
- 9) Any commercial or industrial use not expressly permitted in the conservation easement;
- 10) Disposal of waste or hazardous material; and
- 11) Livestock grazing except for the purpose of restoring or enhancing wildlife habitat, control of noxious weeds, or other conservation purposes and then only with approval of FWP.

#### Multi-Resource Management Plan (MRMP)

Should DNRC become the fee title owner of the 10,218-acre Lazy Creek Conservation Easement, DNRC and FWP would develop a MRMP similar to that shown in Appendix B, to complement the FWP-held Lazy Creek Conservation Easement. The MRMP would describe those steps that DNRC would take to protect, manage, maintain, and enhance soil, water, range, aesthetic quality, recreation and public access, timber, fish, and wildlife resources in a manner compatible with DNRC's land use and State Trust Land obligations and objectives. The MRMP would not be incorporated into the conservation easement, but would be a separate agreement, required by the conservation easement, and signed and acknowledged by DNRC and FWP.

The specific provisions in the MRMP are designed to be more flexible than the binding terms of the conservation easement. As science or management approaches change or if new landowners acquire the land, the MRMP language may also change. However, any changes to the plan must have the mutual consent of the DNRC (or subsequent landowners) and FWP. The MRMP outlines conservation commitments for forest management; use of sand, gravel and rock; road management; aquatic connectivity; wildlife management; and recreational use.

## **2.2 SECONDARY ALTERNATIVE**

Under the Secondary Alternative, FWP would acquire the proposed Lazy Creek Conservation Easement on the 10,218-acre portion of the Project and DNRC would own the restricted fee (subject to DNRC's decision and approval process). In addition, FWP would assume ownership of the 3,180-acre portion of the Project subject to a BPA conservation easement and associated management plan. The Lazy Creek Conservation Easement and MRMP for the 10,218-acre property would remain as described above. FWP would own and manage the 3,180-acre portion of the Project subject to the terms and conditions of a BPA conservation easement and associated management plan agreed to between FWP and BPA.

The following is a brief summary of the rights BPA and FWP would retain or receive under the terms of the proposed Swift Creek Conservation Easement for FWP ownership. See Appendix C for a copy of the draft Swift Creek Conservation Easement that would encumber five sections of the Project if FWP were to assume ownership.

Under the BPA-held Swift Creek Conservation Easement on 3,180 acres, FWP would have the following retained rights for the property:

- Ownership of the property and ability to transfer ownership of the property subject to the conservation easement;
- Maintain reasonable access for the general public so long as it doesn't impair the conservation values; and
- Ability to manage the property for the benefit of fish and wildlife habitat.

BPA would acquire the following rights on the five sections of the Swift Creek Conservation Easement:

- Access to inspect the property to assure compliance with the conservation easement;
- Access to the property to evaluate the status of the conservation values;
- Ability to restrict activity on the property that is inconsistent with the conservation easement, and to require the restoration of areas or features of the property that are damaged by any inconsistent activity; and
- Should FWP fail to do so, the right to use any and all of the water rights associated with the property for instream flow purposes and to protect those rights from threat of abandonment or forfeiture under relevant law.

The proposed BPA-held Swift Creek Conservation Easement under FWP ownership essentially removes all management rights to the property but allows some management authority to be restored to the landowner (FWP) either through an approved management plan or by written consent from BPA.

### Management Plan

A requirement of the BPA funding is that a Management Plan be developed for the property. The specific provisions in the Management Plan are designed to guide management in a way that protects and provides for the best possible fish and wildlife habitat over time. See Appendix D for the terms of the draft plan that would apply if FWP assumes ownership of these five sections. As science or management approaches change, or specific management actions are proposed, FWP could update or modify the Management Plan with BPA's approval and subject to additional public review.

## **2.3 NO ACTION ALTERNATIVE**

If the Project is not completed as proposed, Weyerhaeuser would continue to own the property and would likely list it for sale on the open market. As described in section 1.2, the property has attributes such as excellent views and a close proximity to the town of Whitefish via Highway 93, that make it a highly desirable location for new homes and/or other development, such as a golf course.

## **2.4 ALTERNATIVE CONSIDERED AND DISMISSED**

FWP and TPL first attempted to identify and work with a third party private forest management company to own and manage the Project under the restrictive CEs and associated management plans. Significant effort was made by all parties to negotiate this approach. Unfortunately, we were unable to bring this alternative to fruition due to the complexity of the project, the requirements of the various partners, need for matching funds, and the Project timeline.

## **3.0 AFFECTED RESOURCES AND PREDICTED ENVIRONMENTAL CONSEQUENCES**

### **3.1 WILDLIFE**

The Project area and the surrounding DNRC and national forest land provide important, highly productive habitat for a wide range of game and nongame species including elk, moose, mule deer, white-tailed deer, grizzly bear, wolf, black bear, wolverine, and Canada lynx. This property is ranked by FWP as a conservation priority due to the possible presence of 40 of 85 species that are ranked as species of Greatest Conservation Need in Montana's 2015 State Wildlife Action Plan (Table 1). The game species mentioned above also provide important local hunting opportunities on the property and the surrounding lands which are heavily used by area hunters.

Two of the species of greatest conservation need are also listed as threatened under the Endangered Species Act (ESA): Canada lynx and grizzly bears. The Project area is considered occupied habitat for Canada lynx, which has been listed as threatened by the USFWS since 2002. In 2014, the USFWS designated five habitat areas in the Lower 48 states as being critical to the recovery and survival of Canada lynx. All of the Project lands are part of the Northern Rockies Recovery Area.

Grizzly bears have been listed as a threatened species under the ESA since 1975. The entire Project area is occupied grizzly bear habitat, including documented use by reproductive females, and is within the Northern Continental Divide Grizzly Bear Ecosystem Recovery Area. The Interagency 2013 Draft Northern Continental Divide Ecosystem (NCDE) Grizzly Bear Conservation Strategy places the entire Whitefish Lake Watershed property within the designated “Primary Conservation Area,” which provides the habitat conditions necessary to accommodate a stable to increasing grizzly bear population within the NCDE. The property contains abundant spring foraging habitat with low-elevation meadows and wetlands that attract grizzly bears from a large surrounding area.

**Table 1.** *Species of Greatest Conservation Need that potentially occur on the Whitefish Lake Watershed Project property as listed in Montana’s 2015 State Wildlife Action Plan.*

➤ Grizzly Bear	➤ Common Loon
➤ Canada Lynx	➤ Common Tern
➤ Wolverine	➤ Evening Grosbeak
➤ Fisher	➤ Flammulated Owl
➤ Hoary Bat	➤ Golden Eagle
➤ Townsend’s Big-eared Bat	➤ Gray-crowned Rosy-Finch
➤ Pygmy Shrew	➤ Great Blue Heron
➤ Western Toad	➤ Great Gray Owl
➤ Northern Alligator Lizard	➤ Harlequin Duck
➤ Western Skink	➤ Horned Grebe
➤ American Bittern	➤ Le Conte's Sparrow
➤ Black Swift	➤ Lewis's Woodpecker
➤ Black Tern	➤ Long-billed Curlew
➤ Black-backed Woodpecker	➤ Northern Goshawk
➤ Bobolink	➤ Northern Hawk Owl
➤ Boreal Chickadee	➤ Peregrine Falcon
➤ Brewer's Sparrow	➤ Pileated Woodpecker
➤ Brown Creeper	➤ Trumpeter Swan
➤ Cassin's Finch	➤ Varied Thrush
➤ Clark's Nutcracker	➤ Veery

**Preferred Alternative:**

The Preferred Alternative would protect all wildlife habitat on the property in perpetuity while allowing continued sustainable forest management. The conservation easement and associated MRMP will minimize the risk of harming the federally listed species on the property. This alternative also ensures that the land would never be subdivided for residential development or other uses that could possibly harm fish and wildlife habitat.

### **Secondary Alternative:**

Under the Secondary Alternative, there would be no significant difference for wildlife species and their habitats between this alternative and the Preferred Alternative because the restricted uses and protections for wildlife species and their habitat on the 3,180 acres under the BPA conservation easement and associated management plan would remain essentially the same whether the land is owned by DNRC (Preferred Alternative) or FWP (Secondary Alternative). However, the rate of habitat change over time may differ between these alternatives because FWP has less capacity to manage the forest resources for wildlife benefit compared to DNRC.

### **No Action Alternative:**

If no action were taken by FWP, The Trust for Public Land would not pursue acquisition of the property from Weyerhaeuser and the property would not be placed under conservation easement. Weyerhaeuser would retain ownership and the property could eventually be sold in whole or in smaller parcels to private residential buyers. Residential development or commercial development, such as a golf course, would be likely outcomes for the property similar to what has happened on other private lands in the area. This would result in the loss of habitat for wildlife species and increase the risk of human-wildlife conflicts in the future.

## **3.2 AQUATIC RESOURCES**

Genetically pure westslope cutthroat trout are found in Meadow Lake located in the northern half of the Project. Swift Creek provides habitat for bull trout (a federally threatened species), cutthroat trout, and mountain whitefish. Both bull trout and westslope cutthroat trout are identified as species of greatest conservation need in Montana's 2015 State Wildlife Action Plan. The entire property contains wetlands and riparian areas which, when healthy and protected from disturbance, provide for excellent water quality within the Whitefish Lake watershed.

### **Preferred Alternative:**

The proposed FWP-held Lazy Creek Conservation Easement would provide for the permanent conservation of enhanced streamside and wetland buffers and management actions as defined in the MRMP to benefit fish and other aquatic species. These riparian and wetland buffers, would also maintain water quality within the Whitefish Lake Watershed and protect a portion of the City of Whitefish's municipal water resource (Whitefish Lake) from water quality degradation that could be caused by subdivision and residential development in the upper watershed. Protection of important regional westslope cutthroat trout habitat would meet an objective of the *Memorandum of Understanding and Conservation Agreement for Westslope Cutthroat Trout and Yellowstone Cutthroat Trout in Montana* which is to "Maintain, secure, and/or enhance all cutthroat trout populations designated as conservation populations, especially the genetically pure components." The proposed conservation easement would support multiple goals of Flathead County's Growth Policy (2012) that include: protecting and preserving water resources; protecting water quality from existing and potential pollution sources; preserving and protecting wetlands and riparian areas; and promoting the preservation of critical fish and wildlife habitat.

### **Secondary Alternative:**

Under the Secondary Alternative, there would be no significant difference for fish species, their habitat, and other aquatic resources between this alternative and the Preferred Alternative

because the restricted uses and protections for fish species and their habitat on the 3,180 acres under a BPA conservation easement and associated management plan would remain essentially the same whether the land is owned by DNRC (Preferred Alternative) or FWP (Secondary Alternative).

### **No Action Alternative:**

No immediate impacts would be likely to occur under the No Action Alternative. Weyerhaeuser would retain ownership and the property could be sold in whole or in smaller parcels to private residential buyers. Residential development or commercial development, such as a golf course, would be likely outcomes for the property similar to what has happened on other private lands in the area. This could result in the loss of habitat for fish species and impacts to water quality within the watershed.

## **3.3 VEGETATION**

The Project area consists of forested valley bottoms and mountains that have been managed for commercial timber production for over one hundred years. Forestland dominates the landscape. It is a mixed conifer forest with all of Montana's commercial timber species represented, as well as important riparian and wetland species. The current forest has been harvested by the Plum Creek Timber Company, the former landowner who merged with Weyerhaeuser in 2016. Dominant species are Douglas-fir, western larch, true firs, Engelmann spruce, and western red cedar. Ponderosa pine, white pine, and lodgepole pine can also be found in most of the area. Cottonwood, alder, and aspen can be found along creeks and near wetland areas with unused forest roads filling in with these species as well. Some paper birch is evident along the streams and on north-facing slopes.

Because of past and ongoing weed management activities by Weyerhaeuser, there are only limited areas where noxious weeds are present; mostly occurring along existing roads on the Project lands. Some of the noxious plant species that are present include knapweed, Canada thistle, and houndstongue.

### **Preferred Alternative:**

The proposed FWP-held Lazy Creek Conservation Easement and associated MRMP would likely reduce the past level of timber harvest while maintaining other vegetation management efforts (fire suppression and weed management), especially in the near term while the current forest stand is allowed to mature. The commercial harvest of cottonwood and aspen trees would be limited to that necessary to maintain the health of or promote new cottonwood or aspen stands. The conservation easement would require DNRC to maintain cottonwood and aspen stands at essentially the same or greater levels as established in the Baseline Report as ecological and climate conditions allow. Noxious weed control would be DNRC's responsibility and they are likely to continue to apply chemical or biological agents in accordance with applicable laws.

This project would conserve streamside vegetation along all waterways and in wetlands through terms in the conservation easement and MRMP that include prohibiting draining, filling, or destruction of any wetland area; implementing enhanced leave tree requirements; and using uneven aged forest management practices in riparian zones and around wetlands.

None of the proposed project parcels have been managed as rangeland in the recent past. Under the proposed Lazy Creek Conservation Easement, livestock grazing would not be permitted unless it was used to control noxious weeds or other invasive non-native plants, or for other land management purposes consistent with the protection and maintenance of the conservation values of the parcels.

**Secondary Alternative:**

Under the Secondary Alternative, the impacts would be the same as described above on the 10,218 acres of the Lazy Creek Conservation Easement. If FWP owned the 3,180 acres in the Swift Creek drainage, FWP would be responsible for noxious weed management and forest management would be limited to actions that benefit fish and wildlife habitat as available funding would allow.

**No Action Alternative:**

Under the No Action Alternative, the property may be sold for development or some other non-forest management use. Depending on the future use, forest and streamside vegetation could be severely reduced or eliminated in places to facilitate potential future developments.

### **3.4 SOILS**

The topography of Flathead County was formed during the ice ages when the enormous glacier that filled the Rocky Mountain Trench of British Columbia thinned as it spread southward through the Flathead Valley and into the Mission Valley. The Mission Range split the glacier sending one branch of ice down the Swan Valley and another to the southern end of Flathead Lake. When the glacier melted it left a deep fill of sediment in the floor of the Flathead Valley (Alt & Hyndman 2003).

The valley bottom is generally level to moderately sloping. Most steep slopes occur along the fringe, in the public and private timberlands surrounding the valley bottom, as well as in Glacier National Park. Approximately 75% of Flathead County has slopes over 25%, most of which occur in the mountainous areas within the National Forest or National Park (Flathead County Growth Policy 2012).

Soil types that are represented throughout the property include primarily glaciated mountain slopes and ridges (*Andeptic Cryoboralfs*, *Andeptic Cryochrepts*, and *Dystic Eutrochrepts*). There are also scattered lacustrine, alluvial, and glacial washout terraces (*Dystic Eutrochrepts*); rock outcrops (*Ochrepts*); depressions (*Borosaprists*); and stream bottoms (*Fluvents*) (as identified in the Natural Resource Conservation Service (NRCS) Soil Survey database). None of the soil types within the properties are classified as “prime farmland” by NRCS.

**Preferred Alternative and Secondary Alternative:**

There would likely be no changes to the existing soil conditions on the Project property under either the Preferred or Secondary Alternatives. If anything, the soil resources would be more likely to be protected and preserved under these alternatives that limit future use of the property.

**No Action Alternative:**

Under the No Action Alternative, there could be soil disturbance and impacts especially if the property is subdivided for a large housing or other commercial development. Most likely only the upper layers of soil would be disturbed under this scenario.

**3.5 LAND USE**

The Project area is currently managed as commercial forest land and has been managed in a similar fashion for over one hundred years. The Upper Whitefish Road crosses through the northern half of the Project area and is open for public motorized use year-round. It is not plowed in the winter and is used mainly for snowmobile, dogsledding, and other winter recreation activities. The current landowner allows non-motorized public use on all other areas of the property throughout the year.

**Preferred Alternative:**

Under the Preferred Alternative, land use is not expected to change on the 10,218-acre FWP-held Lazy Creek Conservation Easement area. Timber management and public recreation will continue on the property.

**Secondary Alternative:**

Under the Secondary Alternative, land use is not expected to change on the 10,218-acre FWP-held Lazy Creek Conservation Easement area. Timber management and public recreation will continue in a manner similar to current use. For the 3,180-acre BPA Swift Creek Conservation Easement under FWP ownership, commercial timber management would no longer occur and the forest will be managed in a way that exclusively benefits fish and wildlife. Public recreation would be allowed to continue as long as it does not impact the fish and wildlife habitat conservation values of the easement area.

**No Action Alternative:**

Under the No Action Alternative, depending on the desires of the future landowner, the property may no longer be managed for commercial timber use and public access could be denied.

**3.6 SOCIOECONOMICS**

Flathead County (County) encompasses 5,256 square miles and is the fourth most populous county in Montana with 96,165 people as estimated by Census Bureau (CEIC 2015). Between 2010 and 2015, the County's population grew by 5.8% - slightly higher than Montana's overall population, which grew by 4.3% (CEIC 2015). During this same period, the city of Whitefish grew by 11.4% (CEIC 2015). Since 2000, the County has experienced a significant amount of subdivision activity. From 2000 to 2010, almost 5,000 lots were created through the County's subdivision process – effectively converting almost 22,000 acres or more than thirty-four square miles into readily developable land.

A summary of the county's economy and its recent changes are stated clearly in the 2012 Flathead County Growth Policy:

The Flathead Valley was historically a natural resource based economy. Logging, mining and commodities production have decreased over the past decade, and as a

result the Flathead economy has had to diversify in order to accommodate this change. The County's economy has experienced significant restructuring over the past thirty years, with significant growth in the retail trade and service industries during the late 1990's and early 2000's. However, the economic downturn has tempered the diversification of the economy in the same way it has affected economic growth and stability. Those industries that experienced enormous increases in employment, labor earnings, and sales over the past decade have since experienced significant losses in these same indicator areas during the recession. The closure of the Columbia Falls Aluminum Company and the Plum Creek mill, coupled with cyclical declines in the wood products and construction industry have added to these losses. However, the natural amenities and quality of life that contribute to the character of Flathead County continue to attract small businesses and technology companies that are becoming more prevalent in light of the new knowledge based, globalized economy. The city of Kalispell's evolution as a regional trade and service center has also contributed to the growth of the County's economic base, even during this period of economic decline.

Manageable forested stands within the project area have trees that are, on average, about 30 years old. In the near term, a limited amount of volume would be produced through activities such as commercial thinning. After 30 to 40 years of growth, the entire property could produce approximately 1.7 million board feet per year which is sufficient to support 17 full-time workers in the wood products industry.

#### **Preferred Alternative:**

The proposed FWP- held Lazy Creek Conservation Easement would help maintain timber industry jobs for local residents and support those associated businesses. Additionally, the proposed conservation easement would support the area's outdoor recreation industry by continuing to provide public access for hunting, fishing, hiking, mountain biking, snowmobiling and other recreational pursuits, which in turn, would positively impact the local outdoor recreation industry and associated businesses.

The Project would help protect water quality flowing into Whitefish Lake. The City of Whitefish gets 20% of its municipal water supply from Whitefish Lake. As the city continues to grow, Whitefish Lake is the primary water source available to accommodate this growth.

One of the primary intents of the Lazy Creek Conservation Easement funding from the Forest Legacy Program is to protect the capacity of lands to produce economically valuable forestry products – all while allowing the Landowner and its successors and assigns to continue conducting sustainable commercial timber and resource management activities. After 30-40 years, the Lazy Creek portion of the Project could produce about 1.2 million board feet of timber per year which could support 12 full-time workers in the wood products industry. Over that same time period, the BPA-held conservation easement on the Swift Creek portion of the property would reduce timber production by up to 0.5 million board feet per year, costing up to 5 jobs in the wood products industry.

An increasing number of homes and developments in the County have occurred in Wildland-Urban Interface areas, which increase the challenges faced by local services when wildfires occur or when wildlife-human conflicts occur. This alternative would decrease the demand for those services in the future and the public costs associated with those services.

DNRC ownership of the Project lands would decrease property tax payments to the County by approximately \$17,800 per year. Revenues generated from the sale of timber on these sections would be distributed to the Common Schools to fund K-12 education in the state.

#### **Secondary Alternative:**

Socioeconomic impacts of the Secondary Alternative would be similar to those described under the Preferred Alternative above. The only difference would be that FWP would continue to pay County property taxes if we acquired ownership of the five sections within the Swift Creek drainage, maintaining about \$4,200 of County property tax revenues that would be lost under the Preferred Alternative.

#### **No Action Alternative:**

Under the No Action Alternative, there would be no immediate change in property tax revenue for the County; however, if the property were to be developed, property tax revenue to the County could increase but a change to residential use could also result in additional costs for County services for such things as wildfire suppression, transportation upgrades and maintenance and emergency services for new residences. Also, the land may no longer be managed for commercial timber harvest and the associated revenue and timber industry jobs may be lost.

### **3.7 AESTHETICS AND RECREATION**

Tourism and outdoor recreation represent a major component of the local economy, with the Whitefish Mountain Resort, Whitefish and Flathead Lakes and nearby Glacier National Park drawing visitors from all over the nation and even the world. Protecting the natural beauty of the area by ensuring that properties like these are not developed would preserve important viewsheds and benefit the growing tourism industry. The property lies next to the Waterton-Glacier International Peace Park Loop, one of the Top 10 Scenic Drives in the Northern Rockies. It is highly accessible from the Flathead Valley and particularly for skiers and summer tourists enjoying the Whitefish Mountain Resort.

The Project area currently provides for a wide range of outdoor recreational opportunities, including fishing, hiking, mountain biking, horseback riding, berry picking, snowmobiling, and big game hunting. A Weyerhaeuser-owned logging road (the Upper Whitefish Road) crosses the Project area and provides easy access to DNRC and USFS land and a cut-across route to the North Fork Flathead River drainage. The road also provides access to one of the most popular snowmobiling areas in northwest Montana, with thousands of local residents and tourists using this road to access more than 200 miles of groomed trails in the adjacent Stillwater State Forest and nearby Flathead National Forest.

**Preferred Alternative:**

Under the Preferred Alternative, public access would be maintained and current recreational opportunities within and through the Lazy Creek portion of the Project would continue. The FWP-held Lazy Creek Conservation Easement would allow DNRC to permit and collect compensation for non-exclusive day use for commercial recreation activities that do not exclude similar public opportunities.

The Upper Whitefish Road that crosses the northern portion of the Project area would remain open and accessible for public use. DNRC would retain the responsibility to maintain the roads and the right to restrict public access when timber harvesting, restoration activities, or emergencies occur.

**Secondary Alternative:**

Under the Secondary Alternative, impacts to aesthetic and recreational resources would be similar to the Preferred Alternative. FWP ownership of the five sections (3,180 acres) in the Swift Creek drainage would result in less forest management designed to promote more rapid development of older forest stands. This may result in fewer short-term aesthetic impacts to these five sections; however, long term aesthetic qualities of the Swift Creek parcels may be greater under this alternative because of the decreased amount of restoration effort.

**No Action Alternative:**

Under the No Action Alternative, the aesthetics and recreation values of the property would not immediately change, but could be altered significantly in the future. Since the Upper Whitefish Road is a private road, it could be closed to public use based on the desire of the future landowner. The public may not be able to access any of this property in the future depending on how it is developed. Development could also impact the property's current viewshed qualities.

**3.8 HISTORICAL AND CULTURAL**

The Project is located in the heart of the ancestral homeland for the Confederated Salish and Kootenai Tribes, which comprise the Bitterroot Salish, the Pend d'Oreille, and the Kootenai tribes. The aboriginal territory of the tribes once exceeded 20 million acres - ranging from western Montana to parts of Idaho and from British Columbia to Wyoming. It is highly likely that this area was used by the tribes for big game hunting, fishing and berry picking.

Miners began to explore the area in the 1860s. The location and growth of communities in northwestern Montana that followed the miners were influenced by transportation routes, the topography, the development of markets, and government land policies. The most significant influence on the settlement of the Flathead Valley was the coming of the Great Northern Railway to the valley in 1891 (McKay 1994).

Several existing towns in the Flathead Valley were founded directly because of the railroad coming through the valley. One of these was Columbia Falls, which was platted by a group of Butte business men as a speculative venture. In 1904, the main line of the Great Northern was moved to the north end of the valley, and the town of Whitefish was platted and carved out of the woods to serve as the new division point (McKay 1994).

**Preferred and Secondary Alternatives:**

No impacts to existing cultural or historic resources on the Project property are likely under either the Preferred or Secondary Alternative. The Project area would be permanently open and accessible to tribe members under the public access stipulations of the proposed conservation easements and would continue to support fish and wildlife populations that tribal members could enjoy under the terms of the Hellgate Treaty of 1855. No activities would be allowed that might impact cultural or historic resources on the property.

**No Action Alternative:**

Under the No Action Alternative, depending on future ownership, use, and potential development of the property, it is possible that any existing culture or historic resources could be impacted.

**3.9 AIR, NOISE, AND ELECTRICAL**

Existing noise levels are low and air quality is relatively good in the Project area most of the time depending upon weather conditions and wildfire events. Timber harvest activities can periodically affect ambient noise levels and burning of logging slash can occasionally impact air quality.

**Preferred and Secondary Alternatives:**

There would be no expected changes to existing air quality or noise levels within the Project area under either the Preferred or Secondary Alternative.

**No Action Alternative:**

Under the No Action Alternative, depending on future use and development of the property, it is possible that air quality and noise levels increase or decrease depending on what type of development and the density of that development ultimately occurs on the property.

**3.10 RISKS TO HUMAN HEALTH AND SAFETY**

The Project area is currently managed as a commercial forest that carries inherent risks to human health and safety associated with wildfire, logging, and commercial transportation. In addition, the entire area is used by the public for a multitude of recreational activities including motorized and non-motorized vehicle travel, hunting, trapping, snowmobiling, wildlife viewing, hiking, and berry picking. All these activities have some degree of risk associated with outdoor use and the use of various types of outdoor equipment.

**Preferred and Secondary Alternatives:**

There would be no expected increased risk to human health or safety on the Project property under either the Preferred or Secondary Alternative.

### **No Action Alternative:**

Under the No Action Alternative, depending on future use and development of the property, it is possible that risks to human health and safety could decrease due to less use by the public or risks could increase under some different future use.

## **3.11 CUMULATIVE IMPACTS**

### **Preferred and Secondary Alternatives:**

The Preferred and Secondary Alternatives have similar cumulative impacts. Completion of this Project would contribute to a larger habitat and species conservation effort in Montana and adjacent Canadian provinces. In the last 15 years, over 300,000 acres in this area have been permanently conserved through conservation easements or outright purchases in partnership with a variety of government agencies and private conservation groups.

The proposed Project would contribute to a massive block of public and private land that stretches into Canada, a landscape that provides important habitat to wide ranging species such as elk, wolverine and grizzly bears, as well as the threatened Canada lynx and numerous other game and nongame species. This area includes Waterton-Glacier International Peace Park and large portions of the Flathead and Kootenai National Forests, which encompass the majority of the Whitefish Mountain Range. It also includes the DNRC's nearby Stillwater and Coal Creek State Forests, which are now being managed under a newly created Habitat Conservation Plan (HCP) that was recently negotiated with the USFWS and put in place on approximately 550,000 acres of DNRC-managed lands scattered across western Montana, including these nearby state forests. The new HCP protects critical habitat on all of these DNRC lands for bull trout, westslope cutthroat trout, grizzly bear, and Canada lynx.

Additionally, the Project would complement millions of dollars invested in landscape conservation by the Forest Legacy Program (\$52 million), the U.S. Fish and Wildlife Service (\$27 million) and the Bonneville Power Administration (\$55 million) in northwest Montana to conserve important fish and wildlife habitats, provide for continued public enjoyment of the associated outdoor recreational opportunities, and maintain working forest landscapes.

### **No Action Alternative:**

Under the No Action Alternative, there would likely be no immediate cumulative impacts. If this property were to be developed in the future, some species, especially grizzly bears, would continue to use it as a migration corridor as well as for their seasonal habitat needs. If conflicts arise and result in the loss of individuals of a species, this could cause impacts at the population level beyond the borders of this Project. The No Action Alternative would not contribute additional acreage to the massive block of public land described under the other two alternatives and would leave these acres available for other land uses.

## **4.0 ENVIRONMENTAL IMPACT STATEMENT DETERMINATION**

Based on the significance criteria evaluated in this EA, is an EIS required? No.

Although the proposed Lazy Creek Conservation Easement and potential land acquisition of the BPA-held Swift Creek Conservation Easement would affect approximately 13,398 acres in perpetuity, the proposed Project would retain the timber management activities on 10,218 acres and public access for the entire Project area. Important wildlife and fisheries habitat that support local revenues generated from hunting and angling activities would also be preserved across the entire Project area.

A limited number of minor impacts from the proposed action were identified in this assessment, as described previously. However, these impacts are considered to be minor. Based upon the above assessment, an EIS is not required and an environmental assessment is the appropriate level of review.

## **5.0 PUBLIC PARTICIPATION AND CONTRIBUTORS**

### **5.1 PUBLIC INVOLVEMENT**

The public will be notified in the following manners to comment on this Draft EA, the proposed action and alternatives:

- Two legal notices in each of these newspapers: *Flathead Beacon*, *Daily Inter Lake*, and *Whitefish Pilot*;
- Direct mailing to interested parties and those who provided input during scoping;
- Public notice on the Fish, Wildlife & Parks website: <http://fwp.mt.gov>.

The public comment period will extend for (30) thirty days beginning June 13, 2017. Written comments will be accepted until **5:00 p.m.** on **July 12**, 2017. Comments can be sent to:

Whitefish Lake Watershed Project  
Montana Fish, Wildlife & Parks  
Attn: Nancy Ivy  
490 N. Meridian Rd  
Kalispell, MT 59901

Or [nivy@mt.gov](mailto:nivy@mt.gov)

Copies of this EA will be available for public review at FWP Region One Headquarters in Kalispell.

FWP has scheduled a public hearing **June 21, 2017 at 6:30 pm** in Whitefish at Grouse Mountain Lodge (2 Fairway Drive) to provide interested organizations and private individuals an opportunity to ask questions about the proposed project and submit public comment.

### **5.2 CONTRIBUTORS**

Montana Fish, Wildlife and Parks  
Fish and Wildlife Division, Kalispell  
Lands Unit, Helena  
Legal Bureau, Helena

Montana Department of Natural Resources and Conservation  
The Trust for Public Land, Bozeman

## 6.0 ANTICIPATED TIMELINE OF EVENTS

Public Comment Period:	June 13 – July 12, 2017
Recommended decision to Fish and Wildlife Commission:	July 20, 2017
FWP Commission Review of Project & Decision:	August 10, 2017
Montana Land Board Review and Decision:	August 21, 2017

## 7.0 PREPARERS

Kris Tempel, FWP Resource Specialist, Kalispell, MT  
Alan Wood, FWP Wildlife Mitigation Coordinator, Kalispell, MT  
Candace Durran, FWP Land Conservation Specialist, Helena, MT  
Zach Zipfel, FWP Legal Counsel, Helena, MT

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- A – Draft FWP-held Lazy Creek Conservation Easement
- B – Draft Lazy Creek CE Multi-Resource Management Plan
- C – Draft BPA Swift Creek Conservation Easement (for FWP ownership)
- D – Draft Swift Creek CE Interim Management Plan (for FWP ownership)

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## **APPENDIX A: DRAFT FWP-HELD LAZY CREEK CONSERVATION EASEMENT**

NOTE: The following draft conservation easement is for Phase 1 of Lazy Creek and would have the acreage amended to include Phase 2 of Lazy Creek once that portion of the Project is completed.

**After recording, return to:**  
Land Unit  
Montana Fish, Wildlife & Parks  
P O Box 200701  
Helena, Montana 59620-0701

## **LAZY CREEK**

### **DRAFT DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2017, by **THE TRUST FOR PUBLIC LAND**, whose address is 901 Fifth Avenue, Suite 1520, Seattle, WA 98164, (the “Landowner”), to the **MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (the “Department”) (collectively, the Landowner and Department are referred to as “the Parties”).

**Exhibits to this Deed of Conservation Easement include the following:**

**Exhibit A – Legal Description of the Land**  
**Exhibit B – Map of the Land**

#### **I. RECITALS**

A. The people of the State of Montana recognize the benefits of protecting riparian corridors and conserving open space that provide habitat for native fish, wildlife and plant communities, while simultaneously managing commercial forests on those lands, and have authorized the Department to acquire conservation easements by voluntary, cooperative means to conserve important habitat.

B. The Landowner is the owner of certain real property in Flathead County (the “Land”), legally described in Exhibit A and depicted in Exhibit B, attached hereto and incorporated herein by this reference.

C. The Land possesses montane forest and riparian vegetation communities that support diverse terrestrial wildlife populations, and habitat for native fish species, including westslope cutthroat trout.

D. The conservation values upon the Land are the native plant communities, fish and wildlife habitat, including lake, stream, and riparian habitat for westslope cutthroat trout, natural

and scenic open space, and public recreational opportunities (“Conservation Values”), as further described and provided for herein.

E. The Land has a history of forest management, and maintaining the opportunity for a productive forest management program that sustains and enhances fish and wildlife habitat is of statewide and local importance.

F. The Land provides important public recreational opportunities, including hunting, fishing, hiking and wildlife viewing.

G. The Forest Legacy Program, administered by the U.S. Department of Agriculture, Forest Service (“Forest Service”) pursuant to §1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC §2103C) and created “to protect environmentally important private forest lands threatened with conversion to non-forest uses,” has awarded a Forest Legacy grant to the Department for a portion of the purchase price of this Easement.

H. This conservation easement was acquired in part with a grant provided by the U.S. Fish and Wildlife Service pursuant to Section 6 of the Endangered Species Act, and will be managed for the purpose of the grant, in accordance with applicable Federal and State law. The conservation easement may not be encumbered, disposed of in any manner, or used for purposes other than those for which it was acquired, without prior written approval of the U. S. Fish and Wildlife Service, Region 6, Denver, Colorado.

## **II. AGREEMENT**

In consideration of the sums paid by the Department for the Easement, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space Land and Voluntary Conservation Easement Act, §§76-6-101 *et seq.*, Montana Code Annotated (MCA); the Department’s wildlife habitat acquisition authority, §§87-1-209 *et seq.*, MCA; and Title 70, Chapter 17, MCA, Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement (the “Easement”) in perpetuity consisting of the following rights and restrictions over and across the Land described in Exhibit A (Legal Description of the Land) and depicted in Exhibit B (Map of the Land), attached and incorporated by reference. The Parties intend this Easement to be a perpetual and irrevocable easement in gross, and further intend its terms and conditions, set forth below, to create equitable servitudes and covenants running with the land, binding upon Landowner’s successors and assigns for the benefit of the Department as Grantee.

### **A. PURPOSES**

1. The purpose of this Easement is to preserve and protect in perpetuity the Conservation Values of the Land, which are the native plant communities, fish and wildlife habitat, including lake, stream, and riparian habitat for westslope cutthroat trout, natural and

scenic open space, and public recreational opportunities (“Conservation Values”), as further described and provided for herein.

2. The Conservation Values of the Land can be protected by the Landowner granting a conservation easement (the “Easement”) to the Department, with the Landowner retaining fee title to and overall management of the Land, pursuant to the terms and conditions of this Easement, consistent with the Landowner’s Rights and consistent with the purposes of this Easement (as hereinafter described).

3. Landowner and the Department agree that a purpose of this Easement is to perpetuate the Land as forest land; to ensure the opportunity for forestry activities permitted hereunder; and to provide that any commercial production of forest products is conducted in accordance with the Multi-Resource Management Plan (“MRMP”), as provided for in Paragraph II.F. hereof. The MRMP is available from the Department.

4. A further purpose of this Easement is to grant to the Department, on behalf of the public, the right of access to the Land for public recreational use, including but not limited to hunting, fishing, trapping, wildlife viewing and camping, as provided herein, in accordance with the MRMP.

5. A further purpose of this Easement is, pursuant to the terms of §76-6-107, MCA, to prevent the Land preserved by this Easement as natural land from being converted or diverted to any use prohibited by the provisions of this Easement or to any use inconsistent with the terms, conditions, or purposes of this Easement.

6. In achieving these purposes, it is the intent of the Easement to allow the continuation of such forest management in accordance with the MRMP, and other uses of the Property as may be conducted consistent with the Conservation Values protected herein. Any and all rights or interests of the Grantor not specifically conveyed to the Department or specifically prohibited by the Easement are reserved to the Grantor.

## **B. LANDOWNER'S RIGHTS**

Landowner reserves to itself, its heirs, successors, and assigns, all rights accruing from ownership of the Land, including the right to engage in or permit others to engage in all uses of the Land that: (1) are not expressly prohibited or restricted by this Easement; (2) are consistent with the Purposes of this Easement, and (3) are consistent with the protection and maintenance of the Conservation Values of the Land. Without limiting the generality of the previous statement, and subject to the restrictions on Landowner's activities in this Easement, the following rights are expressly reserved and, though not an exhaustive recital of consistent uses and practices, are consistent with the Easement. As specified in the paragraphs below, Landowner’s exercise of certain of these rights is conditioned upon prior approval by the Department under the procedures provided for in Paragraph II.H. of this Easement (hereinafter referred to as “Prior Approval”) and Landowner’s exercise of other rights is subject to the prior notice to Department requirement of Paragraph II.H. (hereinafter referred to as “Prior Notice”). Furthermore, Landowner’s exercise of many of these rights is conditioned upon their adherence to the MRMP.

The remainder of these consistent uses shall not be precluded, prevented, or limited by the Easement.

1. Forest Management.

a. The Landowner reserves the right to conduct forest management and improvement activities, including commercial timber harvest; provided, however, that forest management and improvement activities:

i. must be conducted in accordance with the MRMP; and

ii. that Landowner will provide Prior Notice of all forest management activities to the Department. This will consist of a statement of Landowner's intent to conduct forest management activities with general descriptions of the project area and potentially affected streams and road systems. This notification shall serve as the starting point and an invitation to submit comments regarding development of the project. Subsequently, the Landowner will submit to the Department a project-level timber management plan which will consist of a detailed description of proposed activities and maps depicting harvest unit boundaries and any proposed changes to the road network. The Prior Notice must contain, along with the other requirements of Paragraph II.H., an identification of the boundaries of the Riparian Management Zone affected in order to enable the Department to make an informed judgment as to the consistency of the proposed activity with the requirements of the Easement. For the purposes of this Easement, the Riparian Management Zone is defined as a strip of land on either side of all Class I streams (i.e. perennial, fish-bearing streams) with a minimum width equal to the 100-year site index tree height (usually 80 to 110 feet). The 100-year site index tree height will be determined at the project level by field sampling the age and height of several site trees within the stand and comparing those values to locally or regionally developed site index curves; and

b. Notwithstanding other provisions of this Paragraph II.B.1., the Landowner may maintain and improve existing roads, bridges, and culverts located within any Riparian Management Zone, consistent with conditions and restrictions in the MRMP and does not require approval by the Department for such activities, unless such improvements involve the establishment of impervious surfaces in which case Prior Approval is required. For those roads where the Landowner had already secured the prior right to establish impervious surfaces before the development of this easement, Prior Notice is required.

c. The Landowner may enter into a contract or issue a temporary license to a third party for that party to conduct commercial timber harvest or other timber management activities on the Land (commonly called a "logging contract" or a "timber sale"). Any such third-party management activities must be consistent with all provisions of this Easement and the MRMP, and the Landowner retains and accepts full responsibility for compliance with these provisions, for any damages caused by the activities, for any violation of this Easement or the MRMP, and for any restoration or compensation that might be required under the terms of this Easement. Timber harvest rights conveyed to a third party pursuant to this paragraph must be for a specified term of harvest activity, and may not be permanently severed from the Land.

2. Habitat Enhancement and Restoration. Subject to Prior Notice to the Department, the Landowner reserves the right to manipulate vegetation, conduct stream restoration projects, or engage in other habitat enhancement or restoration activities, provided that any such activity must be for the primary purpose of enhancing or maintaining fish and wildlife habitat, and such activity must be in accordance with the MRMP. If any such activity is not contained in the MRMP or otherwise specifically allowed herein, then Prior Approval by the Department is required.

3. Roads.

a. The right to use, maintain, improve, and repair existing roads for the management purposes allowed by this Easement and in accordance with the MRMP except that if such improvements involve the establishment of impervious surfaces then Prior Approval is required. For those roads where the Landowner had already secured the prior right to establish impervious surfaces before the development of this easement, Prior Notice is required. This right includes the right to abandon and reclaim roads that will no longer be used.

b. Subject to Prior Notice to the Department, Landowner may construct and maintain new roads necessary for exercising Landowners rights allowed by this easement consistent with the MRMP. Any proposed new road not in accordance with the MRMP require Prior Approval by the Department.

1 4. Structures.

2 a. The right to maintain, renovate, repair, remove, or replace existing nonresidential structures, including but not limited to bridges, ditches, gates, fences, cattleguards, and culverts necessary for the land management activities allowed by this Easement.

b. The right to place and construct new nonresidential structures necessary for the land management purposes allowed by this Easement, provided that:

i. Only non-residential structures necessary for roads and fencing, such as cattleguards, culverts and bridges, are permitted within the Riparian Management Zones; and

ii. The Landowner may not construct or place a permanent timber processing mill on the Land; and

iii. the temporary placement of equipment and machinery for the purposes of active resource management activities such as log chipping, tree limbing or scaling, or otherwise preparing logs for loading or shipment from the Land is not deemed to be a "timber processing mill" and thus is permitted; and

iv. this right to place and construct new nonresidential structures does not extend to utility facilities, which are specifically addressed in Paragraph II.B.5.

c. The Landowner may construct or place on the Land for temporary use a residential building or structure for resource-management purposes, including but not limited to forest

management; sand, gravel, or rock extraction; and road work. Temporary structures must be outside the Riparian Management Zone, may not exceed 1,000 (One Thousand) square feet, and may not be permanently fixed to the ground.

d. Any building or structure must be removed from the property upon conclusion of the use for which the building or structure was erected or placed on the Land; and upon removal, any disturbed soils must be re-contoured and native vegetation reestablished.

5. Utility Lines, Communication Towers, Power Transmission Lines and Pipelines. The right to construct or permit utility lines, communication towers, power transmission lines and pipelines (collectively referred to as a “utility facility”) on or across the Land; provided, however, that:

a. any utility facility must be constructed in a manner that provides only minimal and localized impacts to the Conservation Values protected by this Easement; and

b. except within the road prism of a road, Prior Approval is required for any utility facility that enters any Riparian Management Zone, for which the Department's approval will not be unreasonably withheld. The request for Prior Approval must contain a delineation of the boundaries of the Riparian Management Zone affected, along with the other requirements of Paragraph II.H., to enable the Department to make an informed judgment as to consistency of the proposed activity with the requirements of the Easement.

6. Chemical and Biological Agents. The Landowner reserves the right to utilize agrichemicals, fertilizers, and biological agents for silvicultural purposes and for control of noxious weeds, as defined by the State of Montana or other lawful authority with jurisdiction. Subject to Prior Approval by the Department, Landowner may use chemical or biological agents to control other nonnative plants not listed as noxious weeds or to control plants, fish, wildlife, and insects that threaten the Conservation Values of the Land. Any such use or application must be in accordance with Applicable Law.

7. Management of Public Use. While the Department is granted the right of public recreational use of the Land through Paragraph II.C.4., the Landowner reserves the right to regulate public use of the Land to address reasonable concerns over the safety of Landowner or contractors. Other than limitations on public use for reasons of safety, any proposed limitations by Landowner on the timing, location or amount of public use must be provided for in the MRMP. Any proposed limitations on public use not provided for in the MRMP are subject to Prior Approval by the Department.

8. Grants of Access.

a. The Landowner shall control and be responsible for road access, maintenance, management, and use regulation, subject to any third-party easement rights in affect at the time of the grant of this Easement.

b. The Landowner may, in its sole discretion, grant to third parties permanent or temporary access rights for all lawful purposes to cross the Land on roads existing at the time of the grant of this Easement provided that such grants do not cause material harm to the Conservation Values or Purposes of this Easement. Prior to issuing any such access rights, Landowner must provide notice to the Department pursuant to the Prior Notice process provided for in Paragraph II.H. The Landowner shall also provide the Department with a copy of any access easement or agreement granted to a third party. Documentation of roads existing at the time of the grant of this Easement may be established through the Easement Baseline Report provided for in Paragraph II.G. or through the road inventory that, pursuant to the MRMP, must be conducted by Landowner within five years of the time of the grant of this Easement.

c. The Landowner may grant to third parties permanent or temporary access rights for any lawful purpose across the Land on new roads to be constructed, provided that the location and construction plans for any new road must have the Prior Approval of the Department, for which the Department's approval may not be unreasonably withheld. Nothing in this Easement may interfere with a third party exercising any right of legal access across the Land that was in effect at the time of the grant of this Easement.

d. The Landowner reserves the right to cross the Land to access for all lawful purposes any adjoining or nearby lands owned by the Landowner, whether such land is owned by the Landowner at the time of the grant of this Easement or acquired by Landowner at a later time.

#### 9. Oil and Gas Exploration, Extraction and Development.

a. For oil and gas rights held by a third party (i.e., severed mineral rights holder at the time of the grant of this Easement), Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party. Landowner and the Department shall confer to review the proposed activity and to determine ways that the activity may be carried out to best mitigate any potential impact on the Land and the Conservation Values. Landowner and the Department shall subsequently cooperate in an effort to influence the third party to adopt recommended mitigating measures in the third-party's exploration and development activities. Nothing herein shall require Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

b. If, however, the Landowner holds or acquires the rights to explore for or develop oil, natural gas, coal-bed methane or other hydrocarbon resources, Landowner will cooperate with the Department to ensure that Landowner conducts any exploration and development activities in a manner that is protective of the Conservation Values of the Land and consistent with any applicable provisions of the MRMP. Landowner is prohibited from exploration or development in the Riparian Management Zone and any exploration or development of oil and gas resources requires Prior Approval by the Department. Further, Landowner may not conduct hydrocarbon exploration or development by surface mining.

c. Landowner must give Prior Notice pursuant to Paragraph II.H. to the Department in the event that the Landowner wishes to pursue, or enters into any lease or other agreement for, oil and gas exploration and development on the Land. Such oil and gas exploration and development must be conducted in a manner consistent with site-specific stipulations developed jointly by the Department and the Landowner as necessary to protect the Conservation Values.

10. Sand and Gravel Extraction and Use. Landowner may extract sand, gravel, rock and road fill material found within the Land for the construction and maintenance of roads, provided such activity is conducted in a manner consistent with the MRMP and the provisions of this paragraph. There may be no more than one site on the Land; the site may not exceed five acres. Sand and gravel extraction is prohibited within the Riparian Management Zones. Borrow pits may be developed within a Riparian Management Zone only for limited, localized use to improve a road in the immediate vicinity. Borrow pits shall be re-graded, reseeded and stabilized within a reasonable time after cessation of use.

11. Subdivision and Real Property Conveyance. For the purposes of regulating subdivision and real property conveyance, the Land (as described in Exhibit A) is considered a whole and undivided parcel of land at the time of the grant of this Easement, notwithstanding any section designations, aliquot parts, government lots or other legal or technical divisions or subdivisions that may exist at the time of the grant of this Easement. The following provisions apply to any division and conveyance of the Land, or any portion thereof:

a. The Landowner may sell, convey, exchange, quit-claim, devise, gift or otherwise transfer title to the Land in its entirety (such actions all termed as "transfer"). At no time in the future shall the Land be held in more than one ownership.

b. The Landowner shall provide Prior Notice to the Department of any proposed real property transfer, and such transfer must be effected with an express provision in the instrument of conveyance stating that the Land is subject to the terms and conditions of this Easement. The Department may provide a copy of the Easement and any related documents to the purchaser or other prospective successor in interest to the Landowner.

c. Subsurface mineral rights severed prior to the grant of this Easement do not constitute a prohibited or restricted division or subdivision for purposes of this Paragraph.

d. The restrictions on land division and subdivision contained in this Paragraph do not apply to the right to sell stumpage, as long as the timber rights are not permanently severed.

e. The Land may not be used as open or natural space or park land for any subdivision or development purposes or requirements on land not covered by this Easement nor may Landowner transfer any development rights on or to the Land separate from the Land. For purposes of this Easement, development rights

include, without limitation, any and all rights, however designated, now or hereafter associated with the Land or any other property that may be used to compute development density, lot yield, or any other development variable of or pertaining to the Land or any other property.

12. Outfitting and Commercial Recreation. The Landowner reserves the right to allow and collect compensation for non-exclusive day use by commercial outfitters. "Non-exclusive" use means that the public also has the opportunity for recreational use, but other outfitters and commercial users may be excluded from use, in accordance with the MRMP.

### **C. DEPARTMENT'S RIGHTS**

The rights conveyed to the Department by this Easement are:

1. Inspect, Preserve and Protect. Subject to the Landowner's rights set forth hereinabove, the Department has the right to inspect, preserve, and protect in perpetuity the fish and wildlife habitat, particularly the montane forest, riparian vegetation communities and stream habitat on the Land, the Land's ecological features and its natural flora, fauna, water resources, and other Conservation Values.

2. Compliance Monitoring and Scientific Observation. The right to enter the Land to monitor Landowner's compliance and to enforce the restrictions on Landowner's activities and rights granted to the Department by this Easement; to observe, study, and make scientific observations of the Land's fish and wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures; all upon prior notice to Landowner and in a manner that will not unreasonably interfere with the use of the Land by the Landowner.

3. Damage Prevention. The right to prevent any activity on or use of the Land that is inconsistent with this Easement and to require the restoration of any areas or features of the Land that may be damaged by inconsistent activity or use by the Landowner in this Easement.

4. Public Recreational Access. The right, on behalf of the general public, of access on and to the Land for the purpose of noncommercial recreation, including but not limited to hunting, fishing, trapping, wildlife viewing and camping. The Parties agree that public recreational access and use of the Land shall be in accordance with the MRMP.

### **D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES**

Any activity or use of the Land by the Landowner, its lessees or agents: 1) that is not enumerated among the specified Landowner's Rights in Paragraph II.B.; or 2) that is inconsistent with the purposes of this Easement is prohibited. Without limiting this general prohibition, the following activities and uses are expressly prohibited or restricted. As specified in the paragraphs below, certain activities may be subject to Prior Approval or to Prior Notice as described in Paragraph II.H. of this Easement, or to adherence to the MRMP.

1. Vegetation Removal and Forest Management. Except as part of the activities provided for in Paragraph II.B. of this Easement, the destruction, removal, control, and manipulation of native vegetation is prohibited. Forest management or timber harvest activities that are not conducted as provided for in this Easement, and in the MRMP, are prohibited.

2. Wetland Areas. The draining, filling, dredging, or destruction of any wetland area or any other activity that has significant adverse impacts on a wetland is prohibited. Wetland areas may be restored, developed or enhanced to benefit wildlife or fisheries as a part of a restoration activity approved under Paragraph II.B.2. The Landowner may withdraw water from wetlands on the Land as necessary and legally authorized for emergency firefighting activities.

3. Subdivision. The partition, division, subdivision or de facto subdivision of the Land is prohibited.

4. Residential Use. Except as specifically provided for in Paragraph II.B.4.c. residential use of the Land and the construction or placement of any residential building or structure on the Land is prohibited; this prohibition, however, does not apply to temporary uses for recreational camping on the Land.

5. Buildings and Structures. The construction or placement on the Land of any building or structure is prohibited, except as specifically provided for in Paragraphs II.B.4, II.B.5. and II.B.9 of this Easement.

6. Water Use. The use or withdrawal of surface or ground water in any manner that would adversely affect the Conservation Values or in any manner is prohibited. The Landowner may withdraw surface or ground water from the Land as necessary and legally authorized for emergency firefighting activities.

7. Chemical and Biological Agents. The use of any herbicide, biological agent, or pesticide in a manner other than as provided for in Paragraph II.B.6. is prohibited.

8. Hardrock Minerals and Coal.

a. The exploration, extraction or development of coal or hardrock minerals (including, for the purposes of this Easement, metals, ores, other solid-form minerals or mineral materials) by Landowner is prohibited.

b. For coal or hardrock mining rights held by a third party, Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party. Landowner and the Department shall confer to review the proposed activity and to determine ways that the activity may be carried out to best mitigate any potential impact on the Land and the Conservation Values. Landowner and the Department shall subsequently cooperate in an effort to influence the third party to adopt recommended mitigating measures. Nothing herein shall require Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

9. Native Surface Materials. The extraction, development or removal of native surface materials, such as soil, rock or decorative rock, is prohibited, except as specifically provided for in Paragraph II.B.10. for sand and gravel and except as incidental to other resource or land management activities permitted under this Easement.

10. Utility Facilities. The installation of any utility facility is prohibited, except as provided for in Paragraph II.B.5.

11. Outfitting and Commercial Recreation. The renting or leasing of, or sale of access to the Land to others for hunting or fishing purposes, or for access across the Land to reach public land or other private land for hunting or fishing purposes, is prohibited, except for the leasing of the Land for non-exclusive commercial guiding and outfitting which allows for concurrent public use, as expressly permitted in Paragraph II.B.12., and except for the granting of access as expressly permitted in Paragraph II.B.8.

12. Shooting Preserve, Wildlife Propagation and Related Activities. The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release, introduction, or trade in any domestic or wild animal is prohibited. This prohibition does not apply to the introduction, transplantation or release of fish or wildlife species on the Land by the Department, which must have the consent of the Landowner for any such introduction, transplantation or release.

13. Industrial Uses. Any commercial or industrial use of or activity on the Land that is non-silvicultural is prohibited, other than those expressly reserved or permitted by this Easement.

14. Waste Disposal. The processing, dumping, storage or other disposal of waste, refuse and debris on the Land is prohibited, except for wood waste products generated through forest management activities on the Land, which may be disposed of on the Land in a manner consistent with forestry best management practices and the Montana Streamside Management Zone Law.

15. Hazardous Materials. Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for silvicultural purposes. The installation of any underground storage tank is prohibited.

16. Fire Suppression Impacts to the Riparian Management Zone. In the case of wildland fire suppression, the Landowner will work with the responsible fire protection agency to minimize fire suppression impacts to the Riparian Management Zone. Landowner will work with the Department and the responsible incident management team to determine necessary actions to repair fire suppression damage.

17. Livestock Grazing. Livestock grazing on the Land is prohibited, except with Prior Approval from the Department and then only for the purpose of using livestock grazing as

a tool to restore or enhance wildlife habitat, control of noxious weeds, or other Conservation Values.

#### **E. GENERAL HABITAT CONSERVATION**

Landowner's forest management, commercial timber harvests, and all other activities permitted on the Land under this Easement shall be carried out as provided for in the MRMP described in Paragraph II.F. below. The MRMP shall describe those steps Landowner will take to conserve environmentally important fish and wildlife habitat, including such matters as retaining vegetative cover, road management, seasonal use restrictions, and preservation of special habitat features.

#### **F. MULTI-RESOURCE MANAGEMENT PLAN AND LIAISON TEAM**

A MRMP has been developed to address forest management, fish and wildlife habitat conservation, and other matters of mutual interest to the Parties and has been signed by the Parties as enforceable and binding on the Parties. The Parties agree to abide by the specific requirements of the MRMP, which have been developed to provide guidance for management of the Land in accordance with this Easement but are not incorporated into this Easement. The Parties shall meet periodically to review the MRMP and, if deemed necessary, to propose adjustments. Any adjustment to the MRMP does not require an amendment of this Easement but must have the consent of the Parties and must be in writing and signed and acknowledged by Landowner and by the Department. If there is any inconsistency between the terms of the MRMP and this Easement, the terms of this Easement control. The Department and Landowner shall keep the current MRMP in their files and shall provide the MRMP to successors in interest to the Land.

If the MRMP is revised from time to time, with the mutual consent of the Department and Landowner as provided in this Paragraph F, then the provisions of the revised MRMP will be the terms under which land management activities, including forest management, may continue on the Land; however, in no event may the revised forest management terms of the MRMP be less protective of the Conservation Values than the MRMP in place at the time of the grant of this Easement.

The Landowner may not convey the Land or any portion thereof unless the successor in interest has executed with the Department a MRMP that will come into effect upon the conveyance. The successor in interest may sign and acknowledge the MRMP that is in effect at the time of the transfer of ownership or, upon agreement with the Department, may sign and acknowledge a revised MRMP.

Landowner and the Department shall form a joint liaison team (the "Liaison Team") consisting of an equal number of representatives of Landowner and the Department. The Liaison Team will provide a forum to review issues related to the Easement and will prepare and, as agreed upon, revise the MRMP. The Liaison Team shall meet as the members shall determine, to deal with any issues that arise over time.

## **G. EASEMENT BASELINE REPORT**

The Parties agree that an Easement Baseline Report has been completed by qualified natural resource professionals, reviewed by the Department and Landowner, and acknowledged by them in writing to be an accurate representation of the physical and biological condition of the Land and its physical improvements as of the date of the conveyance of this Easement. From time to time, with agreement by the Landowner, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or other improved habitat conditions, or to generally improve the quality of the baseline information. A copy of any Easement Baseline Report or map or Updated Baseline Report or map will be provided to the Landowner. Landowner shall have the opportunity to review and comment on any updates to the Baseline Report or Map. In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the Parties may use the report, as well as all other relevant or material documents, surveys, reports, or other information to assist in the resolution of the controversy.

## **H. PRIOR NOTICE AND PRIOR APPROVAL**

Under the terms of Paragraphs II.B. and II.D., the Landowner must notify the Department before undertaking certain activities that are not subject to approval by the Department. This requirement, termed "Prior Notice," informs the Department of the location and type of potential impacts on the Land, affords the Department an opportunity to review the proposed activity, and allows the Department to discuss with the Landowner how the activity will be carried out. Whenever Prior Notice only is required under this Easement, Landowner shall notify the Department in writing not less than thirty (30) days prior to the date the Landowner intends to undertake the activity. The notice shall inform the Department of the nature, location and purpose of the proposed activity in sufficient detail to enable the Department to make an informed judgment as to the consistency of the proposed activity with the requirements of the Easement.

Under certain terms of Paragraphs II.B. and II.D., the Landowner must obtain approval from the Department before undertaking certain specified activities. This requirement is termed "Prior Approval." Whenever Prior Approval is required, Landowner shall notify the Department in writing, requesting approval for the proposed activity, not less than sixty (60) days before the date the Landowner intends to initiate the activity. The request must describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to the consistency of the proposed activity with this Easement. The Department has sixty (60) days from its receipt of the request to review the proposed activity; to determine whether to approve or deny the activity; and to notify the Landowner of its approval or denial. In determining the reasonableness of the withholding of any approval, the Department must determine the significance of the actual or potential impacts of the specified activities on the Conservation Values considering the following criteria: the severity, duration, geographic extent, or frequency of occurrence of the impact of the activities. In any such instance, the Department's approval shall not be unreasonably denied.

A decision by the Department to deny the proposed activity must be based on the Department's determination that the proposed activity is inconsistent with this Easement. If, however, the Department determines that a proposed activity that would otherwise be denied can be modified to be consistent with the Easement, the Department shall inform the Landowner of the manner in which the proposed activity may thereafter be conducted. In such event, the Landowner's activity shall be deemed approved if and only if the Landowner informs the Department of its acceptance of the Department's modifications and subsequently conducts the activity in the manner specified by the Department.

If the Department fails to post or send its response to Landowner's request for Prior Approval within sixty (60) days of its receipt of the request, the proposed activity shall be deemed to be consistent with the terms of this Easement. The Department has no further right to object to the activity identified by such request.

The Landowner shall be under no liability or obligation for any failure to give Prior Notice for any activity undertaken by Landowner necessitated by virtue of fire, flood, act of God, or other element, or any other natural emergency; however, after such an event, if there is damage to the Conservation Values protected by this Easement, the Landowner shall notify the Department of the damage as soon as practicable.

Any notice, response, demand, request, consent, approval, denial, or communication that either Party desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier or personal delivery service with documentation of receipt and the date of delivery. A notice is considered given on the date of its receipt; a response is considered given on the date of its posting by the respondent. Communications should be addressed as follows:

To Landowner:	The Trust for Public Land 901 Fifth Avenue, Suite 1520, Seattle, WA 98164
With a Copy To:	The Trust for Public Land 1007 E. Main Street, Suite 300, Bozeman, MT 59715
To Department:	Administrator, Fish & Wildlife Division Montana Department of Fish, Wildlife & Parks PO Box 200701 Helena MT 59620-0701
With a copy to:	Department of Fish, Wildlife & Parks Attention: Regional Supervisor 490 North Meridian Road Kalispell, MT 59901

or to such address as either Party from time to time shall designate by written notice to the other.

## **I. DISCRETIONARY CONSENT**

The Department's consent for activities that are otherwise prohibited may be given under the following conditions and circumstances: If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in Paragraph II.D., Restrictions on Landowner's Activities, are deemed desirable by both the Landowner and the Department, the Department may, give permission for such activities, subject to the limitations herein. Such requests for permission, and requests for permission for activities requiring the Department's consent, must be in writing and must describe the proposed activity and changed conditions in sufficient detail to allow the Department to judge the consistency of the proposed activity with the purpose of this Easement. The Department may give its permission only if it determines, that such activities (1) do not violate the purposes of this Easement; and (2) enhance or do not adversely affect the Conservation Values of the Land. Notwithstanding the foregoing, the Department and the Landowner have no right or power to agree to any activities that would result in the termination of this Conservation Easement under state or federal law. Nothing in this section requires the Department to consent to any activity otherwise restricted in this Easement, or to consult, or negotiate with the Landowner regarding the withholding or provision of such consent. Further, this discretionary consent may not set a precedent for future actions, but is instead intended as a short-term or one-time approval.

## **J. REMEDIES FOR UNAUTHORIZED USES AND PRACTICES**

If the Department determines that the Landowner has violated the terms of this Easement or that a violation is threatened, or if the Landowner undertakes any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to the Landowner of the violation, and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged.

If the Landowner fails to cure the violation within thirty (30) days after receipt of notice from the Department, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing the violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally corrected, the Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values protected by the terms of this Easement or damage to any Conservation Values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Land to the condition that existed prior to the injury.

If the Department, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Land, the Department may pursue its remedies under this paragraph without prior notice but with reasonable notice of the time and place of the application for injunction to the Landowner or without waiting for the period provided for cure to expire.

The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement, and the Landowner agrees that if Department's remedies at law for any violation of the terms of this Easement are inadequate, the Department shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the Department may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Department's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

The Landowner's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement, and the Department agrees that if Landowner's remedies at law for any violation of the terms of this Easement are inadequate, the Landowner shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the Landowner may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Landowner's remedies described in this section are cumulative and are in addition to all remedies available at law or in equity.

Nothing contained in this Easement may be construed to entitle the Department to bring any action against the Landowner for any injury to or change in the Land resulting from causes beyond the Landowner's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

Enforcement of the terms of this Easement is at the discretion of the Department, and any forbearance by the Department to exercise its rights under this Easement in the event of any breach of any term of this Easement by the Landowner shall not be deemed or construed to be a waiver by the Department of that term or of any subsequent breach of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowner may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches or prescription.

#### **K. HOLD HARMLESS AND INDEMNITY**

The Landowner shall hold harmless and indemnify the Department and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, as a result of the negligence or willful misconduct of the Landowner or its agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees, or contractors. Nothing herein shall create any indemnity obligation by Landowner to the Department for any

hunter, angler, or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of the Landowner or its agents, employees or contractors.

To the extent of its liability for negligent acts covered by the Montana Tort Claims Act (Section 2-9-101, MCA, et seq.), the Department will indemnify and hold harmless the Landowner and its successors and assigns against demands, claims, or liabilities arising from its use authorized under this Easement.

#### **L. EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT**

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the Parties that the conservation purpose of this Easement be carried out in perpetuity. If circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The Parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement. If this Easement is extinguished by judicial proceedings, or should any interest in the Land be taken by the exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation with the Prior Approval of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange, or involuntary conversion of the Land formerly subject to this Easement. The Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that the Department's proportional interest is \_\_\_\_\_% (\_\_\_\_\_), and the value of any future interest will not include any value attributable to authorized improvements to the Land made after the date of this grant, except as to improvements made by or at the expense of the Department, unless evidence at any condemnation hearing or proceeding demonstrates actual damages to the Landowner and the Department which vary in favor of the Department from the proportional interest established above.

This conservation easement was acquired using funds provided to the Department by the U.S. Department of Interior, Fish and Wildlife Service ("USFWS"), as a grant under its Endangered Species Act, Section 6 Habitat Conservation Plan land acquisition program. USFWS regulations require that the Land covered by this Easement be managed in accordance with the terms and conditions of this Easement in perpetuity, unless otherwise approved by the USFWS regional director. The Land may not be encumbered, disposed of in any manner, or used for purposes inconsistent with the Endangered Species Act Section 6 Grant Program without the prior written approval of the Regional Director of the U.S. Fish and Wildlife Service. In the event of judicial termination or extinguishment of the Easement for circumstances as described under this Paragraph L., the Department shall coordinate with USFWS and shall apply any funds received in settlement for such termination or extinguishment to habitat conservation as approved by USFWS.

This Easement was acquired, in part, with federal funds under the Forest Legacy Program (P.L.101-624; 104 Stat. 3359) and that the interest acquired may not be sold, exchanged, or otherwise disposed, unless the United States is reimbursed for the market value at the time of the disposal in proportion to the original Federal investment. Provided, however, the Secretary of Agriculture may exercise discretion to consent to such sale, exchange, or disposition upon the Department's tender of equal value consideration acceptable to the Secretary.

#### **M. ASSIGNMENT**

This Easement is transferable, but the Department may assign this Easement only to only to a local or state agency unless in the future the Forest Legacy Program allows for an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the state of Montana. As a condition of such transfer, the Department shall require that the conservation purposes that this grant is intended to advance continue to be carried out.

#### **N. AMENDMENT**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Landowner and the Department are free to jointly amend this Easement; provided that no amendment may be allowed that will affect the compliance with or the qualification of this Easement under any applicable laws, including §76-6-101, *et seq.*, MCA, or Section 170(h) of the Internal Revenue Code, as amended; and any amendment must be consistent with the purposes of this Easement and may not affect its perpetual duration. Any amendment may not weaken, and should strengthen, the Conservation Values of this Easement.

#### **O. RECORDATION**

The Department shall record this instrument or an abstract of it in a timely fashion in the official records of the appropriate Clerk and Recorder's Office, and may re-record it at any time as may be required to preserve its rights in this Easement.

#### **P. GENERAL PROVISIONS**

1. Controlling Law and Venue. Any legal action arising under this Easement or relating to the subject matter of this Easement between Landowner and the Department shall lie in Lewis and Clark County, Montana, regardless of the party initiating the action.

2. Construction. Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of §76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.

3. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged into this Easement.

4. No Forfeiture. Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.

5. Successors. This Easement is binding on and inures to the benefit of the parties, their heirs, administrators, successors and assigns, and continues as a servitude running in perpetuity with the Land.

6. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.

7. Severability. If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement are not affected.

8. Headings. The section headings provided in this Easement are for information purposes only.

TO HAVE AND TO HOLD the Easement unto the Department, its successors, and assigns forever.

Landowner hereby warrants and covenants to the Department that the Landowner is lawfully seized and possessed of the Land in fee simple with a good and lawful right to grant the same, including a good and lawful right to grant this Easement; that the Department and its successors and assigns shall have the use of and enjoy all the benefits derived from and arising out of this Easement; that Landowner shall at the request of the Department execute or obtain any reasonable further assurances of the title to the Land; and that Landowner will forever warrant the title to the Land and defend the Department against all persons who claim a lawful interest in the Land, except for persons who claim interests under the exceptions to title which are documented in the title commitment received and accepted by the Department at the time of the grant of this Easement .

IN WITNESS WHEREOF, Landowner and the Department have set their hands.

LANDOWNER: THE TRUST FOR PUBLIC LAND

By: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 201\_, by  
\_\_\_\_\_ The Trust for Public Land.

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed Name: \_\_\_\_\_  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_



**Exhibit A**  
**Legal Description of the Land**

**PARCEL 1:**

ALL OF SECTIONS 3, 4, AND 9 OF TOWNSHIP 32 NORTH, RANGE 23 WEST, P.M.M.,  
FLATHEAD COUNTY, MONTANA.

**PARCEL 2:**

ALL OF SECTIONS 10 AND 11 OF TOWNSHIP 32 NORTH, RANGE 23 WEST, P.M.M.,  
FLATHEAD COUNTY, MONTANA.

**PARCEL 3:**

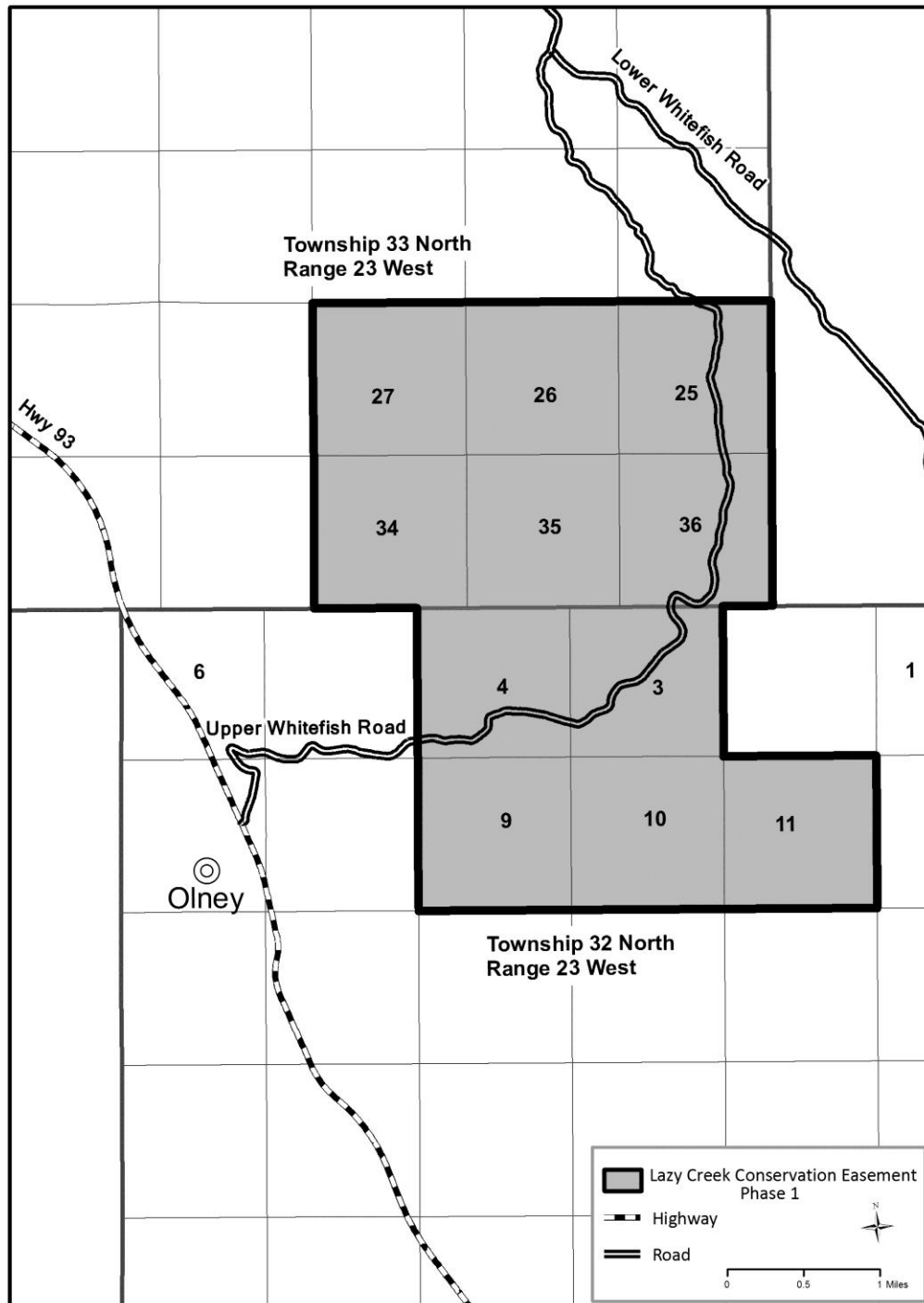
ALL OF SECTIONS 25, 26, 27, 34 AND 35 OF TOWNSHIP 33 NORTH, RANGE 23 WEST,  
P.M.M., FLATHEAD COUNTY, MONTANA.

**PARCEL 4:**

ALL OF SECTION 36 OF TOWNSHIP 33, RANGE 23 WEST, P.M.M., FLATHEAD  
COUNTY, MONTANA.

END OF EXHIBIT A

**EXHIBIT B**  
**MAP OF THE LAND**



End of Exhibit B

## **APPENDIX B: DRAFT LAZY CREEK CONSERVATION EASEMENT MULTI-RESOURCE MANAGEMENT PLAN**

NOTE: The following draft management plan is for Phase 1 of Lazy Creek and would have the acreage amended to include Phase 2 of Lazy Creek once that portion of the Project is completed.

Lazy Creek Phase 1 Conservation Easement  
**DRAFT MULTI- RESOURCE MANAGEMENT PLAN**  
**Standards for Resource Management**

This Multi-Resource Management Plan (“MRMP”), dated as of \_\_\_\_\_, 2017, is entered into by **The Trust for Public Land (TPL)**, whose principal address is 901 Fifth Avenue, Suite 1520, Seattle, WA 98164 (hereinafter referred to as “Landowner”) and the **Montana Department of Fish, Wildlife and Parks**, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (the “Department”).

This MRMP is being entered into pursuant to that certain Deed of Conservation Easement granted by TPL to the Department on \_\_\_\_\_, 2017.

The Land involved in the MRMP possesses montane forests and riparian vegetation communities that support diverse terrestrial wildlife populations and a small lake that provides habitat for westslope cutthroat trout. The Land has a history of forest management, and this MRMP will allow for continued forest management that sustains and enhances fish and wildlife habitat that is of statewide and local importance while allowing for compatible and sustainable timber harvest. The intent of the Lazy Creek Phase 1 Conservation Easement Project (the ‘Project’) is to preserve the conservation values upon the Land, which are described and provided for in the Easement.

A portion of the funding for the Easement is being provided through the Forest Legacy Program (FLP), which is administered by the U.S. Forest Service pursuant to Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC Section 2103C) created “to protect environmentally important private forest lands threatened with conversion to non-forest uses.” The United States Fish & Wildlife Service (USFWS), pursuant to the Endangered Species Act, is providing another portion of the funding for the Easement through its Section 6 Habitat Conservation Plan Land Acquisition Grant Program, which is specifically designed to help states conserve important habitat for federally listed and at-risk species. Habitat Montana and private funding sources are making up the final portion of the funding for the Easement.

**I. PURPOSE**

The purpose of this MRMP is to meet the requirements of the Department to protect and mitigate resident fish and wildlife habitat, and provide for continued public access pursuant to various grant agreements. The Department requires this MRMP to identify and describe objectives and actions that the Landowner will take to protect, manage, maintain, and enhance soil, water, range, aesthetic quality, recreation and public access, timber, fish, and wildlife resources in a manner compatible with landowner objectives and the terms of the Easement.

**II. GENERAL DESCRIPTION**

1. The Land that is the subject of the Easement and this associated MRMP consists of approximately 7,018.24 acres in northwestern Montana, northwest of Whitefish. The

Land is bordered by state land managed by the Montana Department of Natural Resources and Conservation (DNRC) and land owned by TPL. The Land consists of 8 whole or partial sections, all located within Flathead County.

The Land is forested valley bottoms and mountains that have been managed for timber production over the last 100 years. Elevations vary from approximately 3,100 to 5,000 feet. The Land contains exceptional wildlife habitat for a variety of species, including, but not limited to, grizzly bear, Canada lynx, wolverine, elk, mule deer, whitetail deer, black bear, moose, gray wolf, mountain lion, hoary bat, little brown myotis, bald eagle, peregrine falcon, pileated woodpecker, common loon, trumpeter swan, and numerous other bird species, many of which are listed as species of Greatest Conservation Need in Montana's State Wildlife Action Plan (2015). The Land also includes a small portion of the Middle and West Forks of Lazy Creek, small, low gradient streams that support non-native brook trout. The Land also contains Meadow Lake which holds a genetically pure strain of westslope cutthroat trout, as well as several wetlands.

Forestland dominates the landscape. It is a mixed conifer forest with all Montana commercial timber species represented. The current forest is well stocked with a vigorous growing stock of native mixed species. The desired future condition of the forest is through sustainable harvest to create and maintain a diversity of stand structure, age class and species mix with a preference for uneven aged stand conditions where ecological conditions permit. Dominant species are Douglas-fir, western larch, true firs, and Engelmann spruce. Ponderosa pine, white pine, western red cedar, and lodgepole pine can also be found in most of the area. Limited amounts of cottonwood, aspen and paper birch can be found scattered across the Land. The timbered stands vary in age from young regeneration to commercial saw timber.

### **III. FOREST MANAGEMENT**

The following standards are derived from Montana Forestry Best Management Practices (BMPs), Montana Administrative Rules for Forest Management, and Montana Forested State Trust Lands Habitat Conservation Plan (HCP).

#### **A. Timber Harvest Best Management Practices**

1. The Landowner will provide the Department with notification of all forest management activities. This will consist of an initial notification to declare an intent to conduct forest management activities with general descriptions of the project area and potentially affected streams and road systems. This notification shall serve as the starting point and an invitation to submit comments regarding development of the project. Subsequently, the Landowner will submit to the Department a project-level timber management plan which will consist of a detailed description of proposed activities and maps depicting harvest unit boundaries and any proposed changes to the road network.

2. The Landowner will design and implement Forestry Best Management Practices (BMPs) and other site-specific mitigation measures to reduce the risk of sediment delivery to streams from timber harvest activities.
3. When timber harvests are conducted on potentially unstable slopes, the Landowner will modify harvest prescriptions and/or design and implement mitigation measures to avoid increasing the risk of mass failure.
4. Landowner contracts addressing timber harvest activities will include these standards, BMPs and other site-specific mitigation measures designed to avoid, minimize, or mitigate the risk of sediment delivery to streams.
5. The Landowner will administer actively occurring timber harvest activities on a weekly basis to ensure that contract specifications, BMPs, and other resource protection requirements are met.
6. On sites where management actions result in unacceptable levels of impact to soil or water resources, appropriate mitigation and/or rehabilitation measures will be implemented by the Landowner as soon as possible.
7. The Landowner will complete BMP audits and contract administration inspections to monitor the implementation and effectiveness BMPs and other mitigation measures utilized to reduce risk of sediment delivery to streams. The Landowner will notify the Department of scheduled BMP audits and other monitoring activities in order to allow the Department's participation. Scheduling of audits and other monitoring will not necessarily be dependent on accommodating the Department's participation. The Landowner will provide the Department with updates on the results of monitoring activities.
8. The Landowner will take corrective action on BMP implementation and effectiveness departures determined during contract administration and/or BMP audits as soon as possible. Progress at the legacy road and legacy stream crossing structures (existing roads and stream structures that existed prior to the Easement and do not meet current BMP and DNRC HCP fish passage standards) will be communicated annually to the Department through the Liaison Team.

## **B. Timber Management in the Riparian Management Zone**

The Landowner will follow guidelines established within its Habitat Conservation Plan's Riparian Timber Harvest Conservation Strategy on all streams.

**2. Class 1 stream segments:** A Class 1 stream segment is defined in Montana Streamside Management Zone (SMZ) law as a portion of a stream that supports fish; or a portion of a stream that normally has surface flow during 6 months of the year or more (perennial) and that contributes surface flow to another stream, lake, or other body of water.

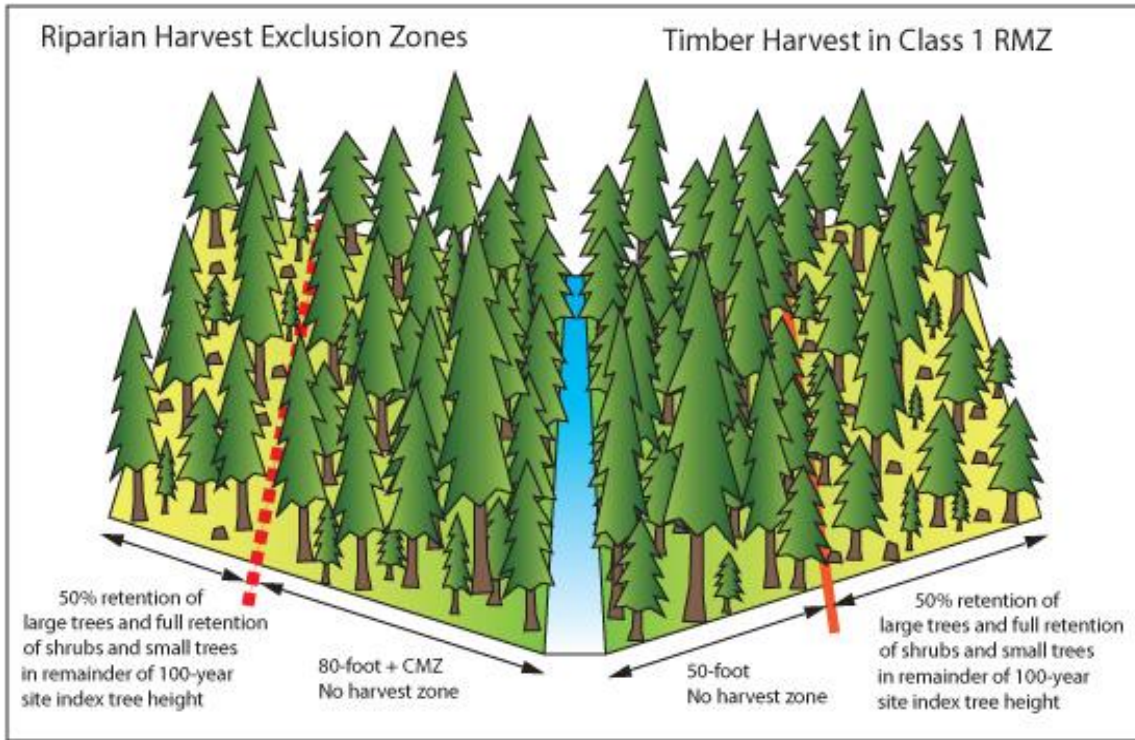
- a. The Landowner will establish a Riparian Management Zone (RMZ) with a minimum width equal to the 100-year site index tree height (usually 80 to 110 feet) for timber harvests immediately adjacent to Class 1 streams. The 100-year site index tree height will be determined at the project level by field sampling the age and height of several site trees within the stand and comparing those values to locally or regionally developed site index curves.

- b. The Landowner will maintain a 50-foot-wide no-harvest buffer within Class 1 RMZs. This buffer will start at the edge of the ordinary high-water mark (OHWM) and extend across the RMZ to a slope distance of 50 feet when measured perpendicular to the stream. Within the 50-foot wide no-harvest buffer, it may be necessary to allow corridors associated with cable logging systems used to fully suspend logs across streams. In these situations, the minimum corridors spacing will be 150 feet with no more than 15 percent of the 50-foot buffer affected.
- c. Harvest prescriptions within the remainder of the RMZ (from 50 feet to a distance equal to the 100-year site index tree height) will retain shrubs and sub-merchantable trees to the fullest extent possible, and a minimum of 50 percent of the trees greater than or equal to 8 inches dbh (see Figure 1).
- d. To ensure protection of native fish species from increased stream temperatures, the Landowner will classify specific stream segments as temperature-sensitive reaches and provide additional protections for Class 1 RMZ harvest. This will be achieved by committing to no statistically significant ( $p \geq 0.05$ ) increase in stream temperature attributable to the Landowner's timber harvest activities in temperature-sensitive reaches. The Landowner will use the most current 303(d) list prepared by the Montana Department of Environmental Quality to identify temperature sensitive stream reaches.

Prior to harvest activities, in a designated temperature-sensitive reach, a fisheries biologist or water resource specialist will analyze the site-specific physical parameters of the harvest unit (topography, stream width, existing shade, etc.). The specialist will suggest appropriate modifications to the standard Class 1 RMZ harvest prescription to ensure the goal of no statistically significant ( $p > 0.05$ ) change in post-harvest stream temperatures is achieved. Potential additional protections that may apply include an increase in the no-cut buffer width or an increase in the overall RMZ width.

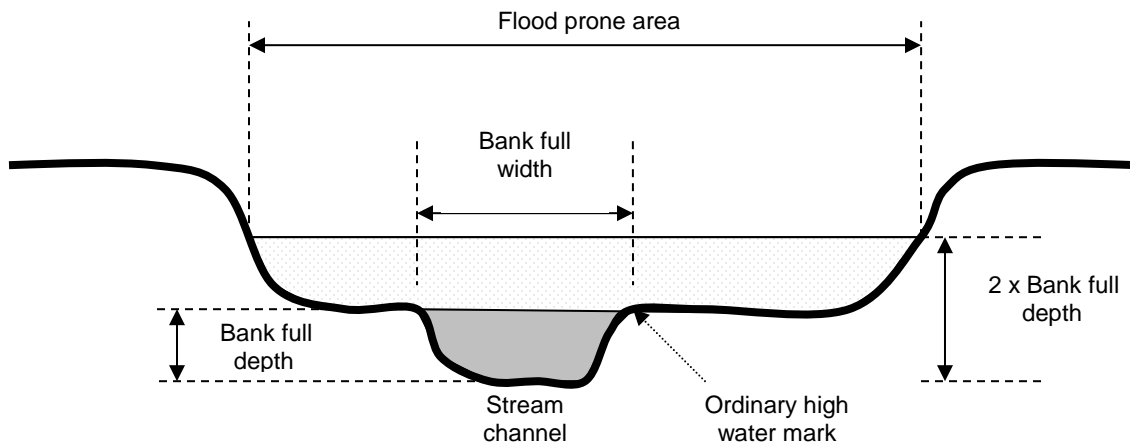
The Landowner will monitor stream temperatures when timber harvest occurs within a RMZ established for a Class I stream segment that has been classified as temperature sensitive. The Landowner will monitor stream temperature by using the mean weekly maximum temperature data from the post-harvest monitoring. The Landowner will perform statistical analysis of variance to check for significant temperature differences between the control and treatment sites. This analysis will compare the variance within days with the variance between sites. Only data points where the adjusted temperature increased from upstream to downstream will be used for the analysis. If the analysis of variance indicates no significant ( $p > 0.05$ ) post-harvest differences between the control and treatment sites, it is assumed that the monitoring goal of no statistically significant change in post-harvest stream temperature has been achieved. If the analysis of variance indicates that there are significant post-harvest differences between the control and treatment sites, the monitoring goal has not been achieved, and post-harvest monitoring will continue through a minimum of one more summer monitoring period (June 19 through September 5).

**FIGURE 1**



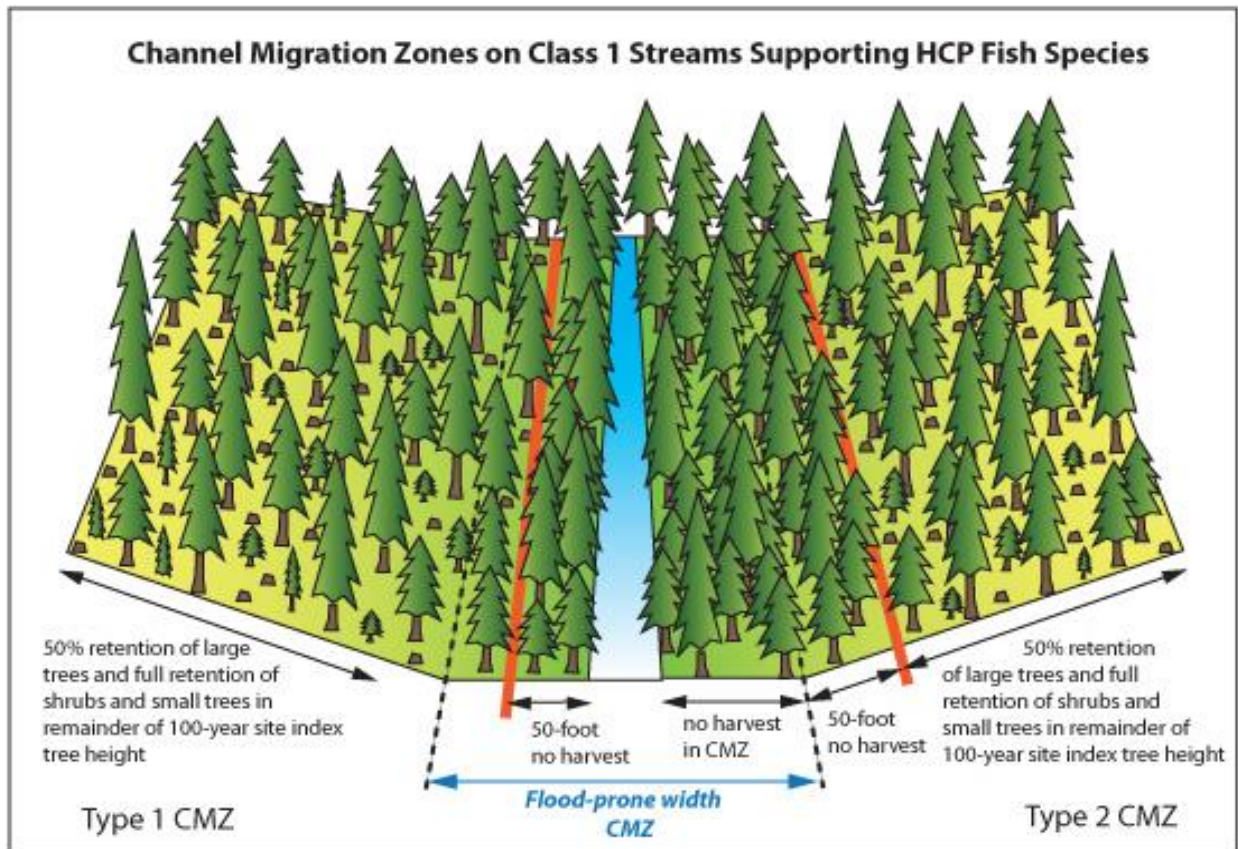
- e. The Landowner will extend SMZs to include adjacent wetlands, where the normal SMZ boundary intercepts a wetland (ARM 36.11.302). Retention tree requirements for the adjacent wetland are the same as the requirements for the first 50 feet of the SMZ (ARM 36.11.305).
- f. On Class 1 streams supporting HCP covered fish species (westslope cutthroat trout), the Landowner will extend RMZs in situations where channel migration is likely to influence riparian functions that are potentially affected by a timber harvest. The Landowner has identified several types of Channel Migration Zones (CMZs) where this potential is more likely. A CMZ refers to the geographic area where the active stream is prone to movement over time. A CMZ is defined as the width of the floodprone area at an elevation twice the maximum bankfull depth (see Figure 2).

**FIGURE 2**



Application of CMZs will be determined on a site-specific basis by the Landowner's fisheries biologist or watershed specialist (see Figure 3).

**FIGURE 3**



- g. CMZs usually influenced by forest management activities are limited to those that occur on streams with an entrenchment ratio of greater than 1:4 and with valley slopes of less than 8 percent gradient that exhibit unstable channel conditions or potential for relatively

high rates of lateral channel erosion and lateral migration. Entrenchment ratio is the floodprone width of a stream divided by the bankfull width of the stream. The floodprone width is equal to two times the maximum depth of the stream at bankfull flows (Rosgen 1994). CMZs will not be established when entrenchment ratios are less than 1.4, because such channels are highly confined and have little or no potential for channel migration. Two types of CMZs are recognized under this strategy, and they are classified using the following approach:

- i. **Type 1 CMZ** - A Type 1 CMZ (Figure 3) corresponds to the floodprone area of streams exhibiting both valley bottom characteristics and alluvial processes. Valley bottom characteristics include channel slopes that are typically less than 1.5 percent and channel patterns that are meandering or braided. Alluvial processes mean that the stream is both eroding and depositing sediment throughout different parts of the channel. An example of an alluvial process would be a bend in the channel of a valley bottom stream, where the outside bend exhibits a deep channel eroding into the stream bank and the inside bend exhibits a shallow channel where eroded sediments are deposited. Streams with Type 1 CMZs typically migrate across valley bottoms rather slowly. Occasionally though, these streams are susceptible to very rapid migration to new or previously abandoned channels during major flood events. Type 1 CMZs are generally associated with Rosgen C, D, DA, and E channel types.
  - ii. **Type 2 CMZ** - A Type 2 CMZ (Figure 3) corresponds to the floodprone area of unstable streams exhibiting sudden erosion and deposition processes. Unstable streams are not able to efficiently transport sediment due to a variety of reasons, which can lead to increased rates of sediment deposition and channel migration. Stream gradients typically range from 1 to 8 percent. Sudden erosion and deposition processes can occur on a Type 2 CMZ when a stream is forced out of its stream banks and into the floodprone area. Examples of sudden erosion and deposition are: (1) a moderately contained stream with evidence of recent sediment deposition on the forest floor outside of the stream channel, (2) alluvial fans, and (3) debris flows or torrents.
- h. A CMZ will be established when harvest activities are immediately adjacent to streams exhibiting these types of channel migration processes. The level of conservation applied within the CMZ will be determined by the type of CMZ present.
- i. On Type 1 CMZs, the portion of RMZ restricted to 50 percent retention will be extended when necessary to incorporate the entire floodprone area. In the event the width of the floodprone area does not extend beyond the normal RMZ, the standard RMZ harvest restrictions will be applied. The 50-foot no-harvest buffer will not be extended.
  - ii. Type 1 CMZ established on a stream with an unstable stream channel or stream bank exhibiting evidence of recent lateral migration will receive the same level of protection as designated for a Type 2 CMZ (see commitment h(iii) below).

- iii. On Type 2 CMZs, the no-harvest buffer is a combination of the floodprone width plus an additional 50 feet within the RMZ. No timber harvest will occur within the entire floodprone width. Additionally, the delineation of the normal RMZ width (based on 100-year site index tree height) will begin at the edge of the floodprone width, and an additional 50-foot no-harvest buffer will be applied within the RMZ.
- i. As part of the HCP riparian timber harvest strategy, allowances associated with the 50-foot no-harvest and 50 percent retention portions of the RMZ (including those extended to incorporate CMZs) may be required in certain cases where harvest is necessary to address specific situations or circumstances that would include fire, insect, and disease salvage harvest. In these cases, the minimum requirements of the SMZ Law must still be met.

The amount of Class 1 stream RMZ managed under these allowances will be limited to the extent that the total Class 1 RMZ area treated in this manner when combined with the existing Class 1 RMZ area in non-stocked, low stocking levels, or seed/sapling size class will not exceed 20 percent within the SRSF administrative unit, or 20 percent of the total RMZ acres of any individual Class 1 stream.

The Landowner will evaluate the level of RMZ area existing in non-stocked, low stocking, or seed/sapling size classes on forested lands within the SRSF on a 5-year basis. The Landowner will adjust the amount of RMZ area that could be treated in this manner to ensure that the target levels (20 percent) are not exceeded. If the target level is reached or exceeded due to circumstances outside of the Landowner's control (such as wildfire or other natural disturbances), no additional harvest using these specific allowances will be conducted on Class 1 RMZs until the amount of non-stocked and/or seed/sapling size class acres drops below the 20 percent maximum allowable.

- i. In forest stands within an RMZ being impacted by disease or insect infestations (e.g., dwarf mistletoe [*Arceuthobium spp.*], mountain pine beetle [*Dendroctonus ponderosae*], or Douglas-fir beetle [*Dendroctonus pseudotsugae*]), harvest of diseased or insect-infested trees may occur within the 50-foot no-harvest buffer. However, harvest of diseased or insect infested trees from within the first 50 feet of RMZ will retain a minimum of 10 trees greater than or equal to 8 inches dbh (or largest diameter available) per 100 feet of stream channel. Retained trees will include all streambank trees and downed trees lying within the stream channel or embedded in the stream bank. To help control disease or insect infestations, harvest of diseased or insect-infested trees from within the remaining RMZ may exceed those levels necessary to meet the normal 50 percent retention requirement.
- ii. In areas within an RMZ that have been subjected to severe or stand-replacement wildfires, salvage harvest of dead trees may exceed the normal 50 percent retention requirement in that portion of the RMZ outside of the 50-foot no-harvest

buffer. No salvage harvest of fire killed trees will occur within the 50-foot no-harvest buffer. Downed trees lying within the stream channel or embedded in the stream bank will not be removed. These harvests will still meet the minimum retention tree requirements of the SMZ Law.

- iii. Removal of individual hazard trees within the no-harvest buffer is allowed. A hazard tree is any tree that poses a risk to public safety, roads, structures, property, and other improvements. Public safety refers to situations that pose a foreseeable risk of injury or death to a person.
- j. Cable harvest systems on Class 1 streams may require corridors through the RMZ in order to fully suspend logs across a stream. In these situations, there would be an exception to the no-harvest buffers that would allow cable corridors with a minimum spacing of 150 feet.

### **3. Class 2 and Class 3 Stream Segments and Other Bodies of Water**

A Class 2 stream segment is a portion of a stream that is not a Class 1 or Class 3 stream segment. Two common examples of Class 2 stream segments are:

- (a) a stream segment that does not support fish; normally has surface flow during less than six months of the year; and contributes surface flow to another stream, lake, or other body of water; or
- (b) a stream segment that does not support fish; normally has surface flow during six months of the year or more; and does not contribute surface flow to another stream, lake, or other body of water.

A Class 3 stream segment is a stream segment that does not support fish; normally has surface flow during less than six months of the year; and rarely contributes surface flow to another stream, lake, or other body of water.

"Other body of water" means ponds and reservoirs greater than 1/10th acre that do not support fish; and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir, or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

Timber harvest conducted within a Class 2 and Class 3 SMZs will implement the Landowner's existing timber harvest practices, which include the Montana Forestry BMPs, State Forest Land Management ARMs 36.11.425 and 426, and the SMZ Law (ARMs 36.11.302 through 313).

- a. Timber harvest conducted in Class 2 and Class 3 SMZs will comply with all applicable requirements regarding harvest prescriptions and tree retention requirements, including:
  - i. Clearcutting will be prohibited in the SMZ of Class 2 streams.
  - ii. Timber harvests within Class 2 SMZs will retain at least 50 percent of the trees greater than or equal to 8 inches dbh on each side of a stream or 5 trees per 100-

foot segment, whichever is greater. Timber harvest conducted within both Class 2 and Class 3 SMZs will protect and retain sub-merchantable trees and shrubs to the fullest extent possible.

- iii. Retention trees within Class 2 SMZs will be representative of species and sizes in the pre-harvest stand.
- iv. SMZs will be extended to include adjacent wetlands, where the normal SMZ boundary intercepts a wetland. Retention tree requirements for the adjacent wetland are the same as the requirements for the normal SMZ. For Class 2 streams, the SMZ will be extended to 100 feet when SMZ slopes are greater than or equal to 35 percent. When the SMZ is extended, most retention will be selected within 50 feet of the stream. The remaining retention trees may be left anywhere in the SMZ.
- v. Equipment restriction zones will be extended beyond normal SMZ requirements on sites with high erosion risk. Sites with high erosion risk are those sites located on highly erodible soils or subject to conditions that result in higher risks of erosion. Examples of highly erodible soils are non-cohesive sands such as granitics and silts with low rock content. Conditions leading to high erosion risks include those areas that are susceptible to mass wasting and those areas already exhibiting high levels of erosion; or severely burned areas where bare mineral soil is exposed, or hydrophobic conditions occur. The Landowner determines high erosion risk from established soil surveys, existing inventories, and/or site-specific field evaluations.

When the Landowner proposes forest management activities on sites determined to have high erosion risk:

- 1) The Landowner shall establish an Equipment Restriction Zone (ERZ) with a minimum of 100 feet when activities are located on slopes greater than 25% but less than 35%.
- 2) The Landowner shall establish an ERZ with a minimum of 150 feet when activities are located on slopes greater or equal to 35%, but less than 50%.
- 3) The Landowner shall establish an ERZ with a minimum of 200 feet when forest management activities are located on slopes greater or equal to 50%
- 4) The Landowner may modify and shorten ERZ widths established for high erosion risk when topographic breaks, existing roads or other factors are present that reduce erosion risk and provide suitable sediment delivery filtration. Modified or shortened ERZ's

must still meet the minimum width of the SMZ required under ARM 36.11.302.

- vi. The landowner shall restrict ground based equipment operations within an ERZ established for high erosion risks on slopes greater than 35% by not allowing the operation of wheeled or tracked equipment within an ERZ.
- vii. The landowner shall not allow the operation of wheeled or tracked equipment within an ERZ established for high erosion risks on slopes less than 35%, unless the operation can be conducted without causing excessive compaction, displacement or erosion of the soil.
- viii. The landowner may allow the use of wheeled or tracked equipment inside that portion of an ERZ when operated from an established road on the side of the road away from the stream pursuant to ARM 36.11.304.

#### **D. Timber Management Sediment Reduction Commitments**

1. The commitments for reducing potential sediment delivery from the Landowner's timber harvest activities (harvest, yarding, site preparation, and slash treatment) focus on reducing the levels of soil disturbance and subsequent levels of erosion and providing buffers zones for effective filtration of sediment. The commitments are primarily based on existing practices, but also include new measures for (1) providing a process for ensuring adequate review by a Landowner water resource specialist of harvest activities potentially affecting HCP fish species habitat, (2) designing and implementing site-specific mitigation measures, and (3) providing adequate feedback using both implementation and effectiveness monitoring. The additions included in the commitments are:

- a. A Landowner water resource specialist will review all proposed timber harvests greater than 100 mbf located within a watershed supporting an HCP fish species. The water resource specialist will conduct a field review and make recommendations that would be integrated into the development of contract specifications, site-specific BMPs, and other mitigation measures. The purpose and role of the specialist reviews are detailed in commitment e. below.
- b. In situations or circumstances determined to have low risk of substantial soil disturbance, the Landowner may forgo this level of review and a water resource specialist may not make any recommendation that would be integrated into contract specifications, site-specific BMPs and other mitigation measures. Low risk will be determined after consulting with the Landowner's water resource specialist. An example of a situation that would not require field review by a water resource specialist might include such activities as salvage harvest from existing roads with no RMZ present.
- c. Timber harvests proposed on high-hazard sites prone to mass failure will be screened during the cumulative watershed effects coarse-filter analysis during proposed project environmental review. The Landowner's water resource specialist will conduct a field review of all proposed harvest locations when the cumulative watershed effects coarse-

filter analysis indicates the timber harvests are located on sites with elevated risk of slope instability and are prone to mass failure.

- d. When timber harvests are conducted on unstable slopes, the Landowner will modify harvest prescriptions and/or design and implement mitigation measures to avoid increasing the risk of mass failure.
- e. The Landowner will design and implement timber sale contract specifications, special timber harvest operation requirements, site-specific BMPs, and other mitigation measures to reduce the risk of sediment delivery to streams affecting HCP fish species. The Landowner's water resource specialist will make recommendations that will be integrated into the development of contract specifications, special operating requirements, site-specific BMPs, and other mitigation measures.
- f. Contracts addressing the Landowner's timber harvest and associated forest management activities will include applicable standard operating requirements and restrictions; special operating requirements and restrictions; BMPs; and site-specific mitigation measures designed to avoid, minimize, or mitigate the risk of sediment delivery to streams affecting HCP fish species.
- g. The Landowner will administer timber sale projects to ensure that contract specifications, BMPs, and other resource protection requirements are met.
- h. On sites where practices implemented have resulted in unacceptable levels of impact to soil or water resources, appropriate mitigation and/or rehabilitation measures will be implemented as soon as possible. Examples of unacceptable levels of impact are major departures in BMPs, or violations of the State SMZ law resulting in actual sediment delivery to streams or a high risk of sediment delivery to streams.

## **E. Waste Disposal**

1. The processing, dumping, storage or other disposal of waste, refuse and debris on the Land is prohibited, except for wood waste products generated through forest management activities on the Land, which may be disposed of on the Land in a manner consistent with forestry best management practices, provided that such disposal does not adversely impact the Conservation Values.
2. Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for silvicultural purposes. The installation of any underground storage tank is prohibited.

## **F. Cumulative Watershed Effects**

1. The Landowner shall include an assessment of cumulative watershed effects (CWE) on projects involving substantial vegetation removal or ground disturbance. The Landowner will initiate a CWE analysis on all forest management projects (including projects categorically excluded from MEPA analysis) involving (1) upland timber and salvage harvest of more than 15 acres or 50 mbf, (2) RMZ harvest of green timber, or (3) salvage harvest within the RMZ of 1 or more acres of dead and dying timber. Using the analysis, the Landowner shall ensure that the project will not increase impacts beyond the physical limits imposed by the stream system for supporting its most restrictive beneficial use(s), when considered with other existing and proposed state activities for which the scoping process has been initiated. The analysis shall identify opportunities, if any exist, for mitigating adverse effects on beneficial water uses.

- a. The Landowner shall set CWE threshold values at a level that ensures compliance with water quality standards and protection of beneficial water uses with a low degree of risk.

#### **IV. SAND, GRAVEL AND ROCK EXCAVATION MANAGEMENT**

1. The Landowner retains the right to extract sand, gravel, and rock through surface mining techniques in accordance with Applicable Law, provided that the exposed surface area for any such site does not exceed five acres in size, there is only one site disturbed at any time, and the site is not within the RMZ, as previously defined.

2. The Landowner will design and implement site-specific BMPs and other mitigation measures to reduce the risk of sediment delivery to streams affecting HCP fish species from all such extraction sites. A Landowner water resource specialist will make recommendations that will be integrated into the development of contract specifications, permits, and Plans of Operation (as required under ARM 17.24.217).

3. The Landowner's extraction sites will comply with biennial agreements established with county weed boards. Noxious weeds will be managed utilizing an integrated weed management approach. Such practices include, but are not limited to: (1) The use of weed-free equipment; (2) re-vegetation of disturbed areas with site-adapted species, including native species as available; and (3) biological control measures included in timber sale contracts and Plans of Operations (as required under ARM 17.24.217).

4. Soil, sand gravel and rock development and use associated with borrows is considered a normal and necessary component of road construction and road maintenance. Development and use of borrows is allowed unconstrained when associated with allowable road construction and/or road maintenance activities. Borrow pits shall be re-graded, reseeded and stabilized within a reasonable time after cessation of use.

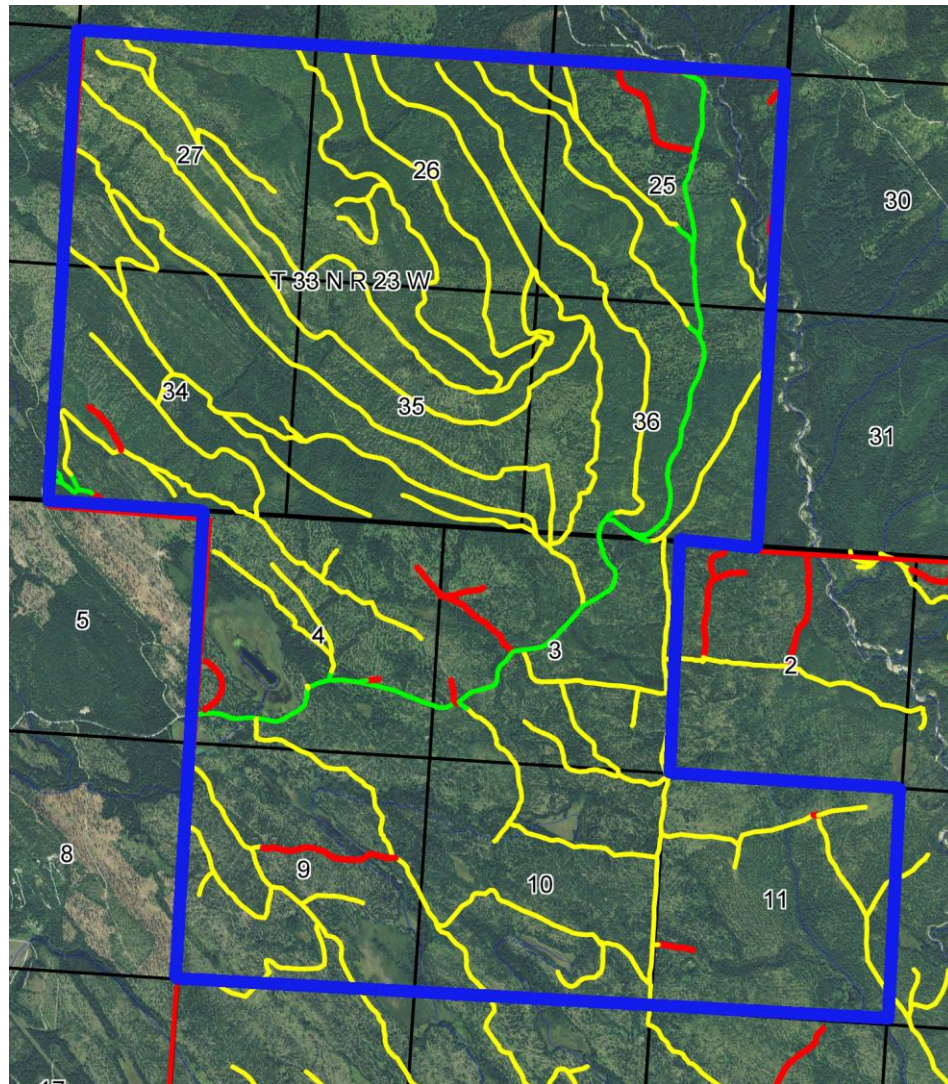
Borrows are small sources of sand, gravel, rock or fill that are used solely within the road right of way clearing limits. Borrows will be limited only to the minimum materials needed for road construction and maintenance activities in the immediate vicinity of the borrow source (i.e. a culvert or bridge installation requiring native fill and/or bedding material). Material from borrow sources will not be exported off-site. Sizes of borrows range from small disturbed areas

associated with the removal of several yards, to larger cut slopes that in no instance will exceed ½-acre in size. Borrow pits will not occur in stream channels, beds or banks of Class 1 and 2 streams. Borrow pits will be recontoured and reseeded after use.

## **V. ROAD MANAGEMENT**

### **A. Road Inventories**

1. The initial baseline for roads and their location has been provided by the previous landowner (Figure 5) and will be updated by the Easement Baseline Report. For the purposes of this MRMP, road density will be calculated as the miles of road by road class (i.e., open, restricted and total) divided by the total area of the subject Land. For roads located within RMZs, road amounts will be tracked and reported in linear miles of road located within an RMZ.



**Figure 5.** Road map identifying roads closed by a barrier (red), closed by a gate (yellow), and open to public motorized use (green) with the Phase 1 Land outlined in blue.

2. The Landowner will complete an inventory of roads within the first five years that Land is under their ownership to update the initial baseline map. Roads inventoried will be those that Landowner has legal access to and sole ownership of, or has entered cost-share or reciprocal access agreements.
3. The information collected during the initial road inventory will be used to:
  - a. Verify the location and class of each road segment included in the initial road baseline;
  - b. Identify the location of additional road segments that were not included on the initial road baseline;
  - c. Determine the class, condition, and sediment delivery status of each road segment;
  - d. Verify the location, type, and effectiveness of closure structures included in the initial baseline;
  - e. Identify the location and determine the effectiveness of additional closure structures that were not included in the initial baseline;
  - f. Revise the initial baseline map used for the commitments contained in this MRMP;
  - g. Recalculate the open, restricted and total road densities, and the total linear miles of road located in RMZ that were used in the initial road baseline. Road densities will be calculated for the entire area covered by this MRMP and linear miles of road will be calculated for the total miles of road located within all RMZ area covered by this plan.
4. Class of road is defined by the following:
  - a. Open roads – Administratively open to the public for wheeled motorized use during any portion of the year.
  - b. Restricted roads – Managed to limit the manner in which motorized vehicles may be used (except as provided for in #5, below). Restricted roads will have a physical barrier that restricts the general use of motorized vehicles. Administrative uses by the landowner or their agent(s) that are consistent with other measures in this document are allowed. Barriers will be man-made or naturally occurring (e.g. gates, barricades, earthen berms, vegetation that makes the road impassable, eroded road prism, rocks, etc.).
  - c. Abandoned road – Impassable to motorized vehicles due to effective closure, but has drainage structures that have not been removed.
  - d. Reclaimed road – Impassable to motorized vehicles due to effective closure. It has been stabilized and culverts and other drainage structures if present have been removed, but the road prism may remain. Reclaimed roads will be re-vegetated (including soil preparation where necessary) with native vegetation consistent with the site, and made impassable for motorized vehicles through means such as ripping of road prisms, placement of root wads, boulders, slash/debris, and reforestation, etc.
  - e. Temporary road – A low-standard road that is used for forest management which, following use, will be reclaimed.
  - f. Total road density – Combined road density of both open and restricted road classes.
5. Licensed snowmobile use or use of other tracked over-the snow vehicles will be allowed from November 15 through March 31 on restricted roads within the MRMP area (Figure 5). Winter

use dates and authorized use areas may be altered upon mutual agreement of both parties. Individual roads may be temporarily or permanently restricted from winter use by the landowner for the purposes of human safety or resource protection.

6. Road condition – refers to whether a road segment meets BMPs standards or requires improvements to meet BMP standards. These evaluations will also include an assessment of existing and potential sources of sediment delivery from roads to streams, and information necessary to develop site-specific corrections to meet BMP standards.

7. Sediment delivery status – refers to inventoried road segments and stream crossing sites as being either:

- a. Low risk of sediment delivery (meets BMPs and/or has very low risk of sediment delivery);
- b. Moderate risk of sediment delivery (does not meet BMPs, has moderate risk of sediment delivery, or meets BMPs but is poorly located); or
- c. Elevated risk of sediment delivery (does not meet BMPs, is poorly located, is currently delivering sediment, or has high risk of future sediment delivery).

8. The Landowner will periodically complete subsequent road inventories to verify the class, condition and sediment delivery status of each road segment. Time interval between subsequent road inventories will be developed through the Liaison Team.

9. Commitments for road densities will be the following:

	Area	
Time period	Property-wide (including RMZ)	RMZ
Prior to the initial road inventory (up to 5 years)	-Allowance of 5 miles of temporary roads. -No increase in open and total road density.	Maintain or reduce open, and total road mileage.
After inventory	- Allowance of 5 miles of temporary roads. - Maintain or reduce open and total road density.	Target decrease in roads by class to be determined.

10. The Landowner will provide for prior review of road building proposals by the Department. The purpose of such reviews shall be to help ensure compliance with the terms of the Easement, not for the purpose of formal approval.

11. Landowner may construct and maintain up to 5 miles of temporary roads on the property covered by this MRMP to facilitate timber management activities. These roads will be built to minimum BMP standards and reclaimed within one year following completion of project-related activity. Temporary roads will not be included in total road density calculations and will be closed to public access during their use. Following reclamation, the temporary roads shall not be usable or accessed for commercial, administrative or public motorized use.

12. Within one year following the completion of the road inventory and associated transportation planning, the Landowner will coordinate with the Department to develop a net reduction target for linear miles of roads located within RMZs.

13. The Landowner may change the class of roads through management actions, reclaim roads, or construct new roads only if the net effect of such actions does not increase open or total road densities on the Land covered under this plan, or increase the total linear distance of open or total roads within RMZs. Reclaiming a road segment removes it from the density and mileage calculations.

14. The Landowner may temporarily close portions of any road(s) on lands covered under this plan for the purpose of human safety without prior notification of the Department. Activities may include, but are not limited to: timber felling, hauling, road construction, road maintenance, culvert installations, fire management, etc.

15. For the property-wide calculation of road density, density shall be calculated as the miles of road by class (i.e., open, restricted, and total) divided by the total area of the subject Land. For the RMZ, road amounts will be calculated and tracked by the total linear miles of road located within all RMZs covered by this plan. Multiple landowners (if any) shall coordinate road management activities and the cumulative calculation of road density shall not exceed maximum allowable density on the subject Land. Any allocation of rights shall be included in any documents of conveyance.

## **B. Road BMPs**

1. Existing roads or newly constructed roads that are no longer needed for forest management will be reclaimed. Decisions made to reclaim roads will be based on the consideration of several factors, including but not limited to: planned activities, desired future stand conditions, silvicultural objectives, infrastructure needs, available resources, fire protection access needs, contractor availability and risk of sediment delivery to streams. If cost of such work precludes such reclamation efforts, the Landowner and Department agree to seek grants or other funding options to ensure that priority reclamation needs are met.

2. The Landowner shall inspect road closure structures, such as gates, barriers, and earth berms, at least once every year for effectiveness in restricting access. Effective closure is accomplished when a road is impassible to unauthorized motorized vehicles. Landowner shall repair or modify ineffective closures within 1 year of discovering or being informed of their ineffectiveness by the landowner or their agent, the public, or the Department.

3. Project-level, site-specific corrective actions will be developed and implemented by the Landowner on sites identified as having an elevated risk of sediment delivery where the Landowner has legal access and has sole ownership. These sites would be improved to BMP standards and to reduce the risk of sediment delivery to streams.

4. Corrective action will be completed by the Landowner on all sites identified as having high risk of sediment delivery within the first 15 years of the initiation of this agreement. The

Landowner will provide the Department information regarding the progress toward meeting this timeline upon request. These projects will be contingent upon availability of grant funding or project level funding from timber sale projects.

5. The Landowner will work with other landowners and cooperators to address road segments with shared ownership that have been identified as having high risk of sediment delivery.

6. Road construction, re-construction and road maintenance activities will meet Forestry BMPs and incorporate site-specific mitigation measures to reduce the risk of sediment delivery to streams.

7. New road locations will avoid high hazard sites prone to mass failure as required in Montana Forestry BMPs. When new road construction or reconstruction cannot be avoided on potentially unstable slopes, the Landowner will design and implement site-specific mitigation measures to reduce the risk of mass failure. Landowner must give Prior Notice to the Department before undertaking new road construction on high hazard sites.

8. The Landowner will evaluate and consider the use of alternative yarding systems that minimize road needs if such systems are practical and economically feasible, and their use will meet immediate and foreseen future management objectives.

9. The Landowner will complete BMP audits and contract administration inspections to monitor the implementation and effectiveness of BMPs and other mitigation measures utilized to reduce risk of sediment delivery to streams. The Landowner will give Prior Notice to the Department of scheduled BMP audits and other monitoring activities in order to allow for the Department's participation in those activities. However, monitoring activities will not necessarily be rescheduled to accommodate the Department's participation. The Landowner will provide the Department with updates on the results of all applicable monitoring activities.

10. The Landowner will limit the construction of new roads in riparian/wetland areas, avalanche chutes and berry fields to those roads that are essential to forest management. In addition, any roads built in these areas will be constructed so as to minimize the mileage of roads in such areas.

### **C. Other Road Management Commitments**

1. Road building proposals by the Landowner will be provided to the Department for prior review. The purpose of such reviews shall be to help ensure compliance with the Easement terms, not for the purpose of formal approval.

2. The Landowner may temporarily close portions of any road(s) on lands covered under this agreement for the purpose of human safety without prior notification of the Department. Activities may include, but are not limited to: timber felling, hauling, road construction, road maintenance, culvert installations, fire management, etc.

### **D. Aquatic Connectivity**

1. Within the Easement area, the Landowner will provide connectivity for adult and juvenile native fish species during low to bankfull flows by emulating streambed form and function. This will be accomplished using the best available design while considering site conditions and cost efficiencies.
2. The Landowner will inventory and survey all stream crossing structures located on stream segments supporting native fish species on roads they have access to and sole ownership of to assess levels of fish connectivity within the first 5 years of this agreement. Once this assessment is completed the Landowner and Department will meet to develop a mutually agreeable timeline and schedule for improving, replacing or removing existing stream crossing structures that are not currently providing connectivity for native fish species during low to bankfull flows.
3. The Landowner will prioritize road-stream crossing improvements based on existing levels of connectivity, as well as species status and population goals established while taking into consideration other regulatory agencies' or cooperative organizations' activities and goals. Genetic data used for a coarse filter will be obtained primarily from the Department data sets. Where practicable and where time permits, the Landowner will collaborate with the Department to collect genetic information for target species to supplement those data sets.
4. Fish passage structures in streams will be designed to pass a minimum of the 50-year flood event.
5. Road-stream crossings that provide connectivity to limited or marginal fisheries habitat may not be required to emulate streambed form and function when approved by the Department.
6. Habitat connectivity may not be desirable in instances where establishment of continuous habitat would expose native trout populations to competition by introduced species. The Landowner will consult with the Department prior to creating new connections between previously blocked stream reaches.

## **VI. WILDLIFE MANAGEMENT**

### **A. Grizzly Bear Best Management Practices**

1. The Landowner's employees and contractors and their employees are prohibited from carrying firearms while on duty, unless the person is specifically authorized to carry a firearm under DNRC Policy 3-0621.
2. Human or pet food, livestock food, garbage, and other attractants will be stored in a bear-resistant manner.
3. Burnable attractants (such as food leftovers or bacon grease) will not be buried, discarded, or burned in an open campfire.
4. The Landowner will suspend all motorized forest management activities within 0.6 mile of an active den site from the date of discovery through May 31.
5. The Landowner will design helicopter operations requiring flights less than 1,640 feet above ground level for forest management activities in a manner that avoids or minimizes flight

time over known seasonally important areas. Where practicable, the Landowner will design flight paths less than 1,640 feet above ground level to occur at least 1 mile from such areas.

6. The Landowner will leave up to 100 feet of vegetation between open roads and clearcut or seed tree harvest units. Open roads where visual screening must be retained are considered those accessible to the general public during any portion of the grizzly bear non-denning season.

7. The Landowner will examine all primary road closures in recovery zones annually and repair ineffective closures within 1 year of identifying the problem.

8. The Landowner will maintain the existing open road density (ORD) and will not exceed the total road density on the Land. A road is considered “open” if it is open to the public for wheeled motorized use during any portion of the year. Administrative motorized use behind gates associated with management of the property is acceptable and does not count toward open road calculations.

9. The Landowner will design new clearcut and seed tree cutting units to provide topographic breaks in view or to retain visual screening for bears by ensuring that vegetation or topographic breaks be no greater than 600 feet in at least one direction from any point in the unit.

10. Commercial forest management activities, including salvage harvests, are prohibited during April 1 through June 15.

11. Mechanical site preparation, road maintenance, and bridge replacement, or any combination of these three activities are allowed during the April 1 through June 15 period, but may not exceed 10 days per year.

12. Administrative uses behind gates associated with management of the property is acceptable throughout the year.

13. Commercial forest management activities are allowed within 100 feet of an open road throughout the year.

## **B. Security and Habitat**

1. Within the Easement area the Landowner will carry out forest management practices in accordance to those practices and procedures set forth within the Montana DNRC Forest State Trust Lands Habitat Conservation Plan (2012). This document basically guides the Landowner’s project design, operational use, open road densities, cover, screening, and motorized use and cannot be changed on the Land without Prior Approval of the Department.

## **C. Hardwood Management**

1. The commercial harvest of cottonwood trees is prohibited. Additionally, the harvest, felling, destruction, and removal of cottonwood trees are prohibited, except:

- a. As may occur incidentally during the normal conduct of forest management activities;

- b. As part of the construction or maintenance of roads, fences or other improvements authorized by the Easement;
- c. For the purpose of addressing safety hazards to forest managers or the public; or
- d. When granted prior approval by the Department, which must find that the harvest, felling, destruction, or removal activity will be beneficial to the overall habitat value of the Land.

2. The harvest of aspen trees is prohibited, unless such harvest is granted Prior Approval by the Department, which must find that the harvest will be beneficial to the overall habitat values of the Land. Additionally, the Landowner may not intentionally damage or destroy aspen stands; provided, however, that the Landowner may harvest coniferous timber in or associated with an aspen stand through normal forest management practices and may, in conducting such a harvest, cause damage to aspen trees, without being in violation of this paragraph. The intent of this restriction is to ensure that aspen remain an important habitat component of the landscape at a level that meets their full ecological potential under historic fire regimes. The Liaison Committee will review this provision periodically to ensure that the intent of this section is met but not in a way that threatens the economic viability of the Land to produce commercial timber products.

### **C. Canada Lynx Habitat Commitments**

1. The Landowner will retain an average of two snags and two live snag recruitment trees of greater than 21 inches diameter at breast height (dbh) per acre on the warm and moist habitat type group and the wet habitat type group (Green et al. 1992; Pfister et al. 1977). The Landowner will retain an average of one snag and one live snag recruitment tree of greater than 21 inches dbh per acre on all other habitat type groups. If snags or snag recruitment trees of greater than 21 inches dbh are not present, then the largest snags or snag recruitment trees available will be retained. Snags may be evenly distributed or clumped. If there is an absence of sufficient snags or recruits, some substitution between the two may occur.
2. On blowdown salvage projects, 1 percent of the blowdown area will be left unsalvaged. The material will preferably be retained in a nonlinear patch or patches.
3. The Landowner will prohibit motorized forest management activities and prescribed burning associated with forest management activities within 0.25 miles of known active lynx den sites from May 1 through July 15.
4. The Landowner will retain small, shade-tolerant tree species in thinned portions of pre-commercial thinning units within mapped lynx habitat if they do not pose substantial competition risks to desired crop trees.
5. The Landowner will retain patches of advanced regeneration of shade-tolerant trees as a component of commercial harvest prescriptions in lynx winter foraging habitat in 10% or less of the entire thinning area.
6. The Landowner will maintain a connected network of suitable lynx habitat along RMZs, ridge tops and saddles.

## **VII. RECREATIONAL USE**

### **A. General Recreational Use**

1. Trust Lands Recreational Use Rules (ARM 36.25.146-162) shall apply in the MRMP area to DNRC-owned properties. Persons who possess a valid Montana Conservation License from the Department are authorized to engage in hunting, fishing, and trapping on legally accessible state trust lands. Prior to trapping on state land, persons are required to possess a "Special Recreational Use License (SRUL) for Trapping" at no additional cost. Persons desiring to conduct all other types of noncommercial general recreation such as hiking, camping, sight-seeing, skiing, day horseback use, etc., unless such activities are conducted in conjunction with and incidental to hunting, fishing, or trapping, will be required to possess a State Land Recreational Use License. All other State Recreational Use Rules shall be applicable as they existed on date this plan went into effect unless changed or updated by mutual agreement between the Landowner and the Department. In summary:

- a) Motorized vehicle use by recreationists is restricted to federal roads, state roads, dedicated county roads, other county roads that are regularly maintained by the county and those roads on the Land that are designated as open for motor vehicle use.
- b) Road access for public use may be limited for a variety of reasons such as the protection of wildlife, security, prevention of sedimentation from logging roads, public safety and reducing the spread of noxious weeds.
- c) The Landowner may restrict motorized road use with gates, barricades, earthen barriers, and signs.
- d) Hikers, horseback riders, and mountain bikers are allowed behind closed gates, barricades, and earthen barriers. All motorized vehicles are not allowed to operate for recreational purposes behind such barriers.
- e) A person who has in his or her possession a "permit to hunt from vehicle" issued by the Department of Fish, Wildlife and Parks is authorized to drive on any road except a road that is closed by sign or barrier.
- f) Snowmobile use on the roads referenced in (1) (a) is allowed only if permitted by applicable traffic laws and regulations.
- g) Overnight camping is restricted to no more than 14 consecutive days and with a maximum of three consecutive days left unattended. Recreational camping for more than fourteen days requires moving to a new site no closer than 5 miles from the original site. Recreationists may not drive off of open roads for the purpose of establishing a campsite. Exceptions and special use camping is only allowed with written permission of the landowner.
- h) A recreationist may not interfere with legitimate activities of authorized contractors, lessees or their agents conducted pursuant to the contract or lease.
- i) Littering on the Land is prohibited. Recreationists shall pack out their litter.
- j) Commercial activity on the Land by anyone other than Landowner is permitted only with a written permit or contract.
- k) The public's right to recreate on the Land does not include the right to trespass on other private property to reach the Land.
- l) Violators may lose recreational privileges on the Land.

- m) With the mutual consent of the Landowner and the Department, any recreation activity may be restricted if necessary for resource or wildlife management.

## **B. Outfitting and Commercial Recreation**

The Landowner reserves the right to allow and collect compensation for non-exclusive day use by commercial outfitters. “Non-exclusive” use means that the public also has the opportunity for concurrent recreational use, but other outfitters and commercial users may be excluded from use. The Landowner will provide Prior Notification to the Department before issuing Commercial Recreational Use Licenses. The Landowner recognizes that outfitting and commercial recreational use will need to be implemented so as not to adversely affect general public recreational use.

**VIII. LIVESTOCK GRAZING.** Livestock grazing on the Land is prohibited, except with Prior Approval from the Department and then only for the purpose of using livestock grazing as a tool to restore or enhance wildlife habitat or other Conservation Values.

**IX. AESTHETIC QUALITY.** The Landowner recognizes aesthetic values on the land and will consider aesthetic impacts by managing these areas within the Land by using appropriate design standards and harvest methods.

## **X. EASEMENT MONITORING AND AMENDMENTS**

The Department will monitor the terms of the Easement on an annual basis or more frequently if needed. A Liaison Team representing the Department and the Landowner will be established to deal with management issues that may arise over time. It is expected that this MRMP will be amended over time to better represent current knowledge and conditions on the ground.

Any amendment to this MRMP must have the consent of the parties and must be in writing and signed and acknowledged by the parties. If there is any inconsistency between the terms of this MRMP and the Easement, the terms of the Easement control. The Department will keep a current MRMP in its files and will make the current MRMP available to successors in interest to the Land.

LANDOWNER:                   The Trust for Public Land

By: \_\_\_\_\_

DEPARTMENT:     Montana Department of Fish, Wildlife and Parks  
                          1420 East Sixth Avenue, P.O. Box 200701  
                          Helena, Montana 59620-0701

By: \_\_\_\_\_  
Martha Williams, Director

LANDOWNER SUCCESSOR-IN-INTEREST:  
                          Montana Department of Natural Resources and Conservation  
                          1625 Eleventh Avenue, P.O. Box 201601  
                          Helena, Montana 59620-1601

By signature below, the Montana Department of Natural Resources and Conservation (DNRC) hereby acknowledges, accepts and agrees to abide by this Lazy Creek Phase 1 Conservation Easement MRMP.

By: \_\_\_\_\_  
John Tubbs, Director

**APPENDIX C: DRAFT BONNEVILLE POWER ADMINISTRATION  
SWIFT CREEK CONSERVATION EASEMENT (FOR FWP OWNERSHIP)**

**AFTER RECORDING, RETURN TO:**

Bonneville Power Administration  
Real Property Services, TERR  
Re: [Insert BPA Tract No.]  
P.O. Box 3621  
Portland, OR 97208-3621

**DRAFT BPA SWIFT CREEK CONSERVATION EASEMENT FOR FWP OWNERSHIP**

THIS DEED OF CONSERVATION EASEMENT is executed this [redacted] day of [redacted], 20[redacted], by MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0710 (“**MFWP**” or “**Grantor**”), in favor of UNITED STATES OF AMERICA, acting by and through the United States Department of Energy, Bonneville Power Administration (“**BPA**”) whose address is 905 NE 11<sup>th</sup> Avenue, Portland OR 97232. The Grantor and Grantee together are referred to as the “Parties.”

**I. RECITALS**

- A. MFWP is an executive state agency established as the state fish and wildlife agency pursuant to state law, Mont. Code Ann. §2-15-3401, entrusted with responsibility for protecting, preserving, managing, and propagating fish within the State of Montana. Mont. Code Ann. §87-1-201. MFWP is further authorized to acquire real property interests suitable for protecting, preserving, managing, and propagating fish, by gift, purchase or exchange, Mont. Code Ann. §87-1-209, to cooperate with the CSKT in matters involving hunting and fishing, Mont. Code Ann §87-1-228, and to administer a river restoration program cooperatively with tribal and federal organizations. Mont. Code Ann. §87-1-257. The Montana Fish, Wildlife and Parks Commission established by Mont. Code Ann. § 2-15-3402, and the Montana Board of Land Commissioners, established by Art. X, sec. 4, Mont. Const., have the authority to and are required by Mont. Code Ann. § 87-1-209 to approve acquisitions of land or interests in land by MFWP.
- B. BPA is a power-marketing agency having legal obligations under the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. §§ 839-839h (“Northwest Power Act”) to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of Federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Northwest Power Act, the Fish and Wildlife Program adopted by the Pacific Northwest Electric Power and Conservation Planning Council under subsection 4(h) of the Northwest Power Act (16 U.S.C. § 839b(h)), and other environmental laws, including the Endangered

Species Act, 16 U.S.C. §§ 1531-1544 (“ESA”). BPA has the authority pursuant to the Northwest Power Act, 16 U.S.C. §§ 839b(h) and 839f(a), the Federal Columbia River Transmission System Act, 16 U.S.C. § 838i(b), or the Bonneville Project Act, 16 U.S.C. §§ 832a(c) through (f), to acquire real estate or to assist in the acquisition and transfer of real property interests; and

- C. BPA is funding this acquisition of real property interest as the result of several agreements that BPA and MFWP entered into, including the “Memorandum of Agreement Between the State of Montana, the Bonneville Power Administration, the U.S. Army Corps of Engineers, and the U.S. Bureau of Reclamation” also known as the “Montana Fish Accord” in May of 2008, and the “Memorandum of Agreement Between the State of Montana and the Bonneville Power Administration for Resident Fish Mitigation in November of 2010, also known as the “2010 Resident Fish MOA”, in which BPA agreed to fund the acquisition of real property interests to permanently protect and enhance important fish and wildlife habitat, where it either currently exists or at one time existed, in exchange for supporting BPA’s partial fulfillment of Northwest Power Act and ESA obligations, and in exchange for rights of enforcement, entry, and inspection to the United States and its assigns.
- D. BPA in accordance with the mutual commitments of these agreements, copies of which are available from the BPA Manager, Real Property Services, P.O. Box 3621, Portland, OR 97208-3621, provided funding to the Grantee to acquire a conservation easement on certain real property, the Swift Creek Conservation Easement (“Protected Property”) located in Flathead County, Montana. The Protected Property has important features that help BPA meet its statutory obligations to the public under the Northwest Power Act and other environmental laws.

## II. AGREEMENT

- A. **Conveyance and Consideration.** The Grantor, for and in consideration of \$11,448,000, provided by BPA to acquire fee title ownership of the Protected Property, hereby voluntarily grants, bargains, sells and conveys to BPA and its assigns a perpetual easement for conservation purposes (“Conservation Easement”) in, over, under, upon and across the Protected Property, together with rights of entry and access to the Protected Property, which is legally described in **Exhibit A** (Legal Description) and shown in **Exhibit B** (Map), created and implemented under applicable state and federal law, and creating an interest in property intended to be a conservation easement under Montana Code §§ 76-6 *et. seq.* The Parties intend this Conservation Easement to be a perpetual and irrevocable easement in gross, and further intend that its terms and conditions, set forth below, create equitable servitudes and covenants running with the land, burdening Grantor and Grantor’s successors and assigns for the benefit of the United States.
- B. **Purpose.** The purpose (“Purpose”) of this Conservation Easement is to protect and conserve, and as appropriate, to allow for the restoration or enhancement of the Conservation Values (Section C, below) of the Protected Property in perpetuity. As such, the Purpose of this Conservation Easement includes the prevention of any use of the Protected Property that will materially harm or materially interfere with any of the Conservation Values of the Protected

Property. The Grantor intends that this Conservation Easement will confine the use of the Protected Property to activities that comply with the Conservation Easement, including the approved Management Plan. BPA shall have the right, but not the obligation, to enforce any and all terms of this Conservation Easement. The Grantor shall only conduct activities on the Protected Property which are consistent with the Purpose of this Conservation Easement. In the event that there is a conflict between the Grantor's uses or activities and the Purpose of Conservation Easement, the Purpose of the Conservation Easement shall be construed broadly and shall prevail over any conflicting uses or activities of the Grantor.

**C. Conservation Values.** The Protected Property, in its present state, comprises approximately 3,180 acres that support bull trout, Canada lynx and grizzly bears, all ESA-listed species. The Parties agree that the Protected Property includes other important species, habitat, and other important ecosystem attributes which are of significant importance to the social and economic well-being of the Pacific Northwest, and which are dependent on suitable environmental conditions, including:

1. The Protected Property includes 13.8 km of Swift Creek which provide outstanding fish habitat for a variety of fish species, including, but not limited to, bull trout, westslope cutthroat trout, mountain whitefish and other aquatic species.
2. The Protected Property includes 5.7 kilometers of Lazy Creek which provide for water quality benefits for Whitefish Lake and its native fish population.
3. The Protected Property includes exceptional wildlife habitat for a variety of species, including, but not limited to, grizzly bear, Canada lynx, wolverine, elk, whitetail deer, black bear, moose, gray wolf, mountain lion, hoary bat, pileated woodpecker, black-backed woodpecker, and numerous other bird species, many of which are listed as species of Greatest Conservation Need in Montana's State Wildlife Action Plan (2015); and
4. The Protected Property helps form a contiguous, protected corridor for the movement of wildlife and thus plays a central role in ensuring wildlife has safe, biologically appropriate habitat linking the northern Rocky Mountains and the Cabinet and Purcell Mountains;
5. Open-space lands which maintain the rural, natural and scenic, values of the area and contribute to landscape scale conservation and provide corridors for movement of wildlife, and provide opportunities to continue public recreational opportunities in perpetuity, as encouraged and supported by the State of Montana and local land conservation policies adopted in Flathead County, Montana.

**D. Baseline Documentation.** The Grantor and MFWP agree that the characteristics and conditions of the Protected Property at the Effective Date of this Conservation Easement are documented in a **Baseline Documentation Report**, signed and acknowledged by the Parties; the acknowledgment is **Exhibit C**.

**E. Reserved Uses.** The Grantor reserves, for itself and its successors and assigns, the right to

use the Protected Property in any and all ways which are consistent with the Purpose of this Conservation Easement and which are not otherwise prohibited by this Conservation Easement, including but not limited to: the right to record title, the right to convey, transfer, and otherwise alienate title to these reserved rights in accordance with Sections J. 14 and P; the right of quiet enjoyment of the rights reserved in Protected Property; and the right to prevent trespass and control access.

**F. Management Plan.** The Grantor and Grantee shall develop a Management Plan for the Protected Property in accordance with the 2010 Resident Fish MOA, to describe the land and resource management activities, including any restoration actions that MFWP expects to undertake or allow to be undertaken on the Protected Property. The Management Plan shall also identify the allowable use and access by the public of the Protected Property if appropriate. The Grantor and Grantee shall develop the Management Plan in consultation with relevant interested local, state, tribal, and federal resource agencies, and the Grantor and Grantee shall provide an opportunity for public input on the Management Plan. BPA shall review that Management Plan and any proposed amendments for consistency with the Purpose of the acquisition, this Conservation Easement, any other agreement between the Parties and applicable law. BPA must complete its review and the Parties must agree on a final Management Plan or any amendments prior to its implementation. The Grantor and Grantee shall make the final Management Plan, and any final amendments, available to the public.

1. The Parties acknowledge the right of the Confederated Salish and Kootenai tribal members to conduct traditional usufructuary and spiritual uses including hunting, fishing, and gathering in accordance with applicable law.

**G. Public Access.** The Grantor shall provide reasonable public access to the Protected Property (for example, for undeveloped recreational uses, such as hiking, bird watching, hunting, and fishing) unless MFWP and BPA determine such access may materially impair one or more of the Conservation Values of the Protected Property. The Grantor will address public access in the Management Plan.

**H. Annual Report.** The Grantee shall annually submit a report to BPA that describes, at a minimum any: changes in real property interests (including water rights) in the Protected Property; uses or activities undertaken, in progress, or planned; violations or threatened violations of the Conservation Easement; and enforcement action taken. MFWP shall provide the initial annual report in the fifteenth month after the Effective Date, and then annually on that initial report date anniversary thereafter, unless otherwise agreed by BPA.

## **I. Rights Conveyed to Grantee**

1. **General Rights.** The Grantor has conveyed this Conservation Easement to BPA. Subject to valid existing rights of record and those rights specifically reserved to the Grantor, all development rights associated with the Protected Property are vested in Grantee. In addition to any other rights granted to the Grantee pursuant to this Conservation Easement, Grantee has the right to:

- a) Access and inspect the Protected Property at all reasonable times upon reasonable notice (which may be by phone or electronic mail) to assure compliance with this Conservation Easement;
- b) To access the Protected Property upon reasonable notice (which may be by phone or electronic mail) to evaluate the status of the Conservation Values;
- c) Prevent any activity on the Protected Property inconsistent with this Conservation Easement, and to require the restoration of areas or features of the Protected Property that are damaged by any inconsistent activity; and
- d) Should the Grantor fail to do so, to retain and maintain the right to use any and all of the water rights associated with the Protected Property, and to protect those rights from threat of abandonment or forfeiture under relevant law; Grantee may, after providing 90 days advance written notice to the Grantor enter upon the Protected Property and take actions reasonably necessary to maintain the validity of the water rights.

**J. Prohibited Uses.** The Grantor shall manage the Protected Property to protect its fish and wildlife habitat, preventing any and all uses of the Protected Property that are inconsistent with the Purpose of this Conservation Easement. The Grantor may also manage the Protected Property to restore or enhance fish and wildlife habitat, provided the restoration or enhancement activities are approved by BPA, either in an approved Management Plan or by prior written approval. Prohibited uses of the Protected Property include those specifically listed below. The Parties intend that any activity that may materially harm or materially interfere with one or more of the Conservation Values is prohibited, and therefore the list identified below is not exhaustive.

1. *Residential, Commercial or Industrial Uses.* Any residential, commercial, or industrial uses of the Protected Property is prohibited, including timber harvesting, grazing of livestock, and agricultural production.
2. *Construction of Buildings, Facilities, Fences or Other Structures.* Construction of new buildings, facilities, fences or other structures is prohibited. Repair, maintenance, or replacement of existing buildings, facilities, fences or other structures identified in the Baseline Documentation Report are permitted at the same location and within the existing footprint of such structures.
3. *Utilities.* The installation or relocation of new public or private utilities, including electric, telephone, or other communications services is prohibited. Existing utilities on, over, or under the Protected Property may be maintained, repaired, removed or replaced at their current location as that location is documented in the Baseline Documentation Report.
4. *Signs.* Except for no trespassing signs, for sale signs, signs identifying the owner of the Protected Property, and signs that may be erected by the Grantee identifying the Purpose of the Protected Property, all other signs, advertisements, and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet in size.

5. *Waste.* Dumping, collecting, recycling, accumulating, or storing of trash, refuse, waste, sewage, bio-solids, or other debris is prohibited.
6. *Mining.* The exploration, development, mining or extraction of soil, sand, loam, gravel, mineral, oil, gas, or other substance from the surface or subsurface of the Protected Property is prohibited.
7. *Topography.* Altering the existing topography of the Protected Property by digging, plowing, disking, or otherwise disturbing the surface or subsurface is prohibited.
8. *Watercourses/Wetlands.* Draining, dredging, channeling, filling, leveling, pumping, diking, impounding or any other alteration of any watercourses, ponds, seeps, bogs, springs, wetlands, or any seasonally wet area is prohibited, as is altering or tampering with existing water control structures or devices.
9. *Vegetation.* The cutting, trimming, shaping, killing, or removal of any vegetation from the Protected Property, except for noxious weeds, is prohibited.
10. *Exotic Species.* The introduction, cultivation, or use of exotic plant or animal species on the Protected Property is prohibited. Exotic plants include non-native invasive plant species.
11. *Roads and Impervious Surfaces.* Construction of new roads and paving of any existing road not paved or otherwise covered in an impervious material as of the Effective Date is prohibited. Existing roads identified in the Baseline Documentation Report may be maintained and repaired in their current condition and within their existing footprint as identified in the Report.
12. *Vehicle Use.* The use of motorized vehicles is prohibited, except as necessary to carry out activities agreed to by the Grantee, or for limited, de-minimus, non-commercial recreational uses such as hunting or bird watching if those activities are agreed-upon uses in the Management Plan.
13. *Subdivision.* The legal or “de facto” division, subdivision or partitioning of the Protected Property which includes, but is not limited to, any subdivision, short subdivision, platting, building site plan, testamentary division, or other process by which the Protected Property is divided into lots or in which title to different portions of the Protected Property are held by different owners, is prohibited.
14. *Grant of Rights.* The granting of any property interest or rights in the Protected Property, including easements, permits, licenses, and leases, without the prior written consent of the Grantee is prohibited.

**K. Permitted Uses.** Uses or activities otherwise prohibited under Section J above may be allowed but only if: (1) the use or activity is, in Grantee’s sole discretion, consistent with the

Purpose of this Conservation Easement; and (2) the use or activity and any necessary limits or prescriptions are agreed to by BPA in advance, either in a final Management Plan, or by written consent of BPA.

## **L. Enforcement**

1. *Notice of Violation, Corrective Action.* If Grantee determines that the Grantor or its representatives, contractors, successors, or assigns violates or threatens to violate this Conservation Easement, and if such determination or dispute is not resolved by negotiation as set forth in Section M, Grantee will give written notice to the Grantor and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the Purpose, sufficient to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Grantee.
2. *Grantor's Failure to Respond.* The Grantee may bring an action as provided in Section L.3 if the Grantor fails to cure the violation within thirty (30) calendar days after receipt of a notice of violation, or under circumstances where the violation cannot reasonably be cured within such thirty (30) day period, fails to begin curing the violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.
3. *Grantee's Action.* Grantee may pursue an action in a court having jurisdiction to enforce the terms of this Conservation Easement: (1) to enjoin the violation, ex parte as necessary, by temporary or permanent injunction; (2) to require the restoration of the Protected Property to the condition that existed prior to any such injury; and (3) to recover any damages to which it may be entitled for violation of the terms of this Conservation Easement. The remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing.
4. *Grantor's Action.* In the event that the Grantor seeks a determination as to the legal meaning or effect of this Conservation Easement, or as to any alleged violation hereof by Grantee, and if such determination or dispute is not resolved by negotiation set forth in Section M below, then the Grantor shall be entitled to bring judicial action in a court of competent jurisdiction.
5. *Emergency Enforcement.* Notwithstanding the provisions of L.1 and L.2, if Grantee determines on the basis of substantial evidence that circumstances require immediate action to prevent or mitigate significant damage to one or more of the Conservation Values, Grantee may undertake reasonable actions to remove, eliminate or mitigate damages to the Protected Property. Grantee shall provide prior notice to the Grantor of such actions to the extent reasonably practicable and may seek Grantor participation in such actions, but may proceed with such actions without permission from the Grantor or without waiting for the Grantor to take any action.

**M. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out

of or relating to this Conservation Easement by negotiation between executives or officials who have authority to settle the controversy.

- N. Acts of God/Force Majeure.** Nothing contained in this Conservation Easement entitles the Grantee to bring any action against the Grantor for any injury to or change in the Protected Property resulting from causes beyond the Grantor's control, including, without limitation, naturally caused fire, flood, storm, and earth movement, or from any prudent action taken by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Such excuse from performance will be allowed only if such catastrophic event or other event beyond the Grantor's control has caused a substantial degradation of the Conservation Values. The Parties shall make all reasonable efforts to resume performance promptly once the force majeure is eliminated.
- N. Waiver.** The failure of any Party to require strict performance of any term of this Conservation Easement or a Party's waiver of performance shall not be a waiver of any future performance or of a Party's right to require strict performance in the future.

**O. Subsequent transfer.** Grantor agrees to:

1. Incorporate the terms of this Conservation Easement Management Plan and its requirements by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest;
2. Describe this Conservation Easement in and append it to any executory contract for the transfer of any interest in the Property; and
3. Notify BPA in writing regarding any anticipated change in land ownership as early as possible and no later than the time of closing of the transfer.

These requirements apply to the initial Grantor of the Conservation Easement and to all subsequent owners of the Property. The failure of Grantor to perform any act required by this subsection will not impair the validity of this Conservation Easement or limit its enforceability in any way.

- P. Termination or Amendment.** The Grantor has agreed that this grant of a perpetual Conservation Easement gives rise to a property right, immediately vested in the United States, with a fair market value of the Protected Property as of the date of this Conservation Easement.

1. **Presumption Against Termination.** MFWP and BPA intend that the Conservation Values (Part II) be protected in perpetuity, and where appropriate improved.
2. **Amendment.** This Conservation Easement may only be amended by agreement of the Parties. Any such amendment shall be properly documented, executed, and recorded. Amendments based on changed conditions may be made only when the effect of the amendment is to benefit, or least cause no material harm to or material interference with the Conservation Values (for example, amending the Conservation Easement to place further restrictions on the use of or activities on the Protected Property). The Parties may

not use amendments to impliedly terminate the Conservation Easement or remove any portion of the Protected Property from its terms, except to the extent consistent with the Purpose of the Conservation Easement.

- Q. Proceeds after any Termination.** If this Conservation Easement is terminated either voluntarily by the Parties, or by involuntary extinguishment by a court of competent jurisdiction and the termination results in proceeds, BPA is entitled to either (1) 100% of the proceeds or (2) at BPA's election, to review and approve use of the proceeds by the Grantor to acquire new fish and wildlife habitat for BPA mitigation.
- R. Condemnation.** If all or any of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Conservation Easement, in whole or in part, Grantor and Grantee will act jointly to recover the full value of the interest in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting from the taking or in lieu purchase. All expenses reasonably incurred by Grantor and Grantee in connection with the taking, or in lieu purchase will be paid out of the amount recovered. Except as provided by applicable law, Grantor and Grantee agree that Grantee's share of the balance of the amount recovered will be determined by multiplying the balance by the Proportionate Value.
- S. Control.** The Grantor has ownership and control of the Protected Property and is responsible for all incidents of ownership. Such incidents of ownership include, but are not limited to, maintenance and repair of existing structures, hazardous waste response, cultural or historic resource mitigation or preservation, endangered species protection, noxious weed and invasive species response, tort liability, compliance with applicable laws, and payment of applicable taxes and assessments.
- T. Hazardous Substances.** To the best of the Grantor's knowledge, there are no hazardous substances present in, on, or under the Protected Property, including without limitation, in the soil, air, or groundwater, and there is no pending or threatened investigation or remedial action by any governmental agency regarding the release of hazardous substances or the violation of any environmental law on the Protected Property, and that there are no underground storage tanks located on the Protected Property. If, at any time, there occurs, or has occurred a release in, on, or about the Protected Property of any hazardous substances, the Grantor agrees to take all steps necessary to assure its containment and remediation without cost to Grantee, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee will be responsible for remediation in accordance with applicable law. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Grantor's activities on the Protected Property, or otherwise become an operator with respect to the Protected Property within the meaning of the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA"). The Grantor specifically agrees to release and hold harmless Grantee from and against all liabilities for violations or alleged violations of, or other failure to comply with, any federal state or local

environmental law or regulation relating to hazardous substances, including, without limitation, CERCLA, by the Grantor in any way affecting, involving, or relating to the Protected Property, except to the extent such violations or alleged violations are caused by the acts or omissions of Grantee.

- U. Notice.** Any notice permitted or required by this Conservation Easement, unless otherwise specified, must be in writing, delivered personally to the persons listed below, or will be deemed given on the date deposited in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Party in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. The addresses listed below can be modified at any time through written notification to the other Party.

**Notices to MFWP should be sent to:**

Administrator, Fish & Wildlife Division  
Montana Department of Fish, Wildlife & Parks  
PO Box 200701  
Helena MT 59620-0701

With a copy to:

Montana Department of Fish, Wildlife & Parks  
Attention: Regional Supervisor  
490 North Meridian Road  
Kalispell, MT 59901

**Notices to BPA should be sent to:**

Manager, Real Property Services  
RE: [INSERT BPA TRACT NO]  
Bonneville Power Administration  
P.O. Box 3621  
Portland, OR 97208-3621

Fish and Wildlife Project Manager  
RE: [INSERT BPA TRACT NO]  
Bonneville Power Administration  
P.O. Box 3621  
Portland, OR 97208-3621

Or to such other address as either Party designates by written notice to the others.

- V. Effective Date.** This Conservation Easement vests when signed by the Grantor, and accepted by the Grantee.

Exhibit A – Legal Description  
Exhibit B – Map of the Protected Property  
Exhibit C – Acknowledgement of Baseline Documentation Report

To have and to hold the Conservation Easement herein granted unto the United States and its assigns.

IN WITNESS WHEREOF, the undersigned Grantor has executed this instrument this [redacted] day of [redacted], 201[redacted].

\_\_\_\_\_

---

By:  
 Title:  
 MFWP

## Acceptance By the United States of America

---

By:  
Title:  
Bonneville Power Administration

---

Date

ACKNOWLEDGMENT

STATE OF )  
 ) ss.  
County of )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me  
personally  
appeared \_\_\_\_\_,  
known to me or proved to me on the basis of satisfactory evidence to be the person who executed  
the within instrument as the \_\_\_\_\_  
acknowledged to me that \_\_\_he executed the same freely and voluntarily in such capacity; and  
on oath stated that \_\_\_ he was authorized to execute said instrument in such official or  
representative capacity.

Notary Public in and for the

State of \_\_\_\_\_

(SEAL) Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_.

ACKNOWLEDGMENT

STATE OF )  
 ) ss.  
County of )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me  
personally  
appeared \_\_\_\_\_,  
known to me or proved to me on the basis of satisfactory evidence to be the person who executed  
the within instrument as the \_\_\_\_\_  
acknowledged to me that \_\_\_he executed the same freely and voluntarily in such capacity; and  
on oath stated that \_\_\_ he was authorized to execute said instrument in such official or  
representative capacity.

Notary Public in and for the

State of \_\_\_\_\_

(SEAL) Residing at \_\_\_\_\_

My commission expires \_\_\_\_\_.

**Exhibit A – Legal Description**

PARCEL 1:

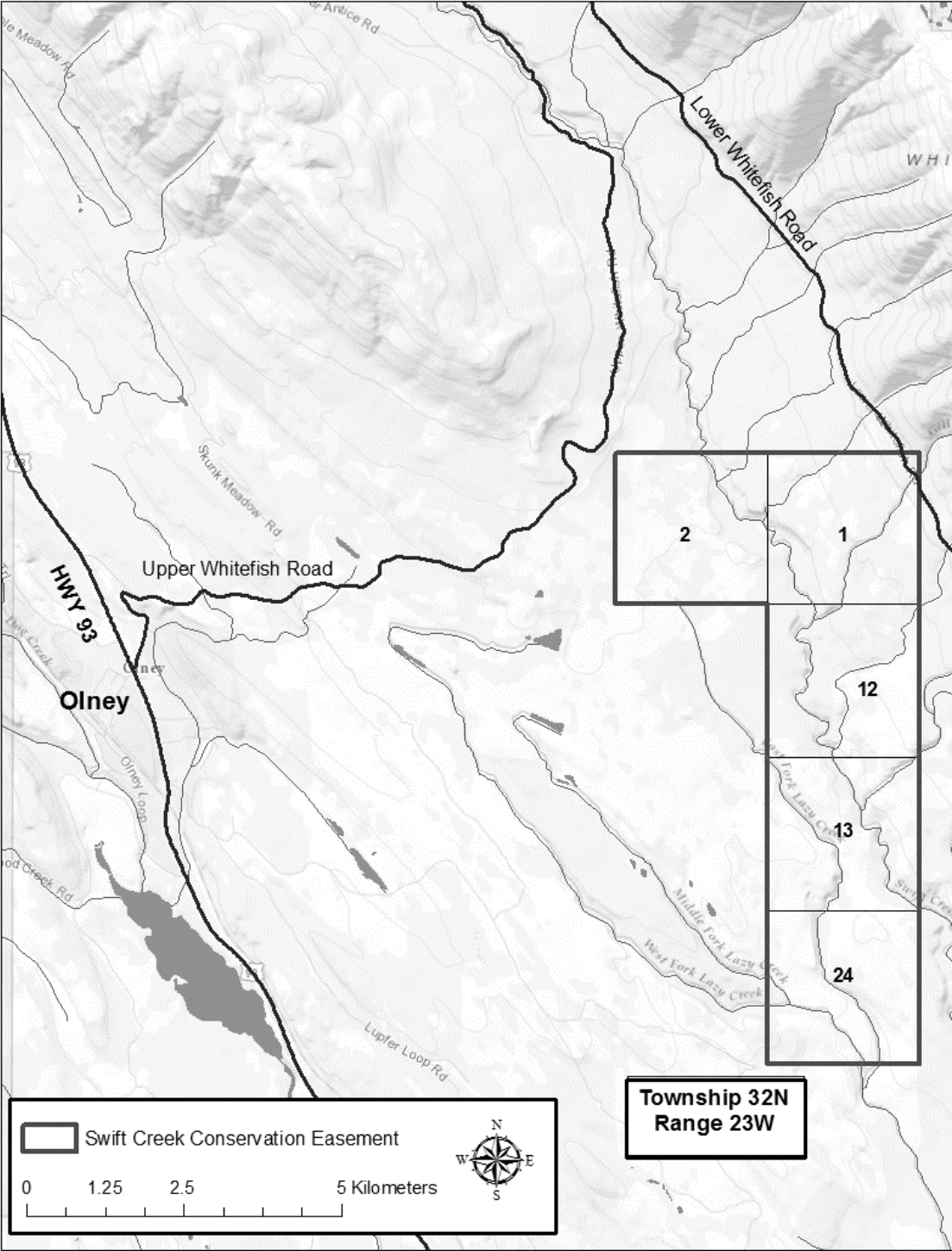
All of sections 1 and 2, of Township 32 North, Range 23 West P.M.M, Flathead County,  
Montana

PARCEL 2:

All of sections 12 and 13, of Township 32 North, Range 23 West P.M.M, Flathead County,  
Montana

PARCEL 3: All of section 24, of Township 32 North, Range 23 West P.M.M, Flathead County,  
Montana

Exhibit B – Map of the Protected Property



**Exhibit C – Acknowledgement of Baseline Documentation Report  
ACCEPTANCE AND ACKNOWLEDGEMENT  
OF  
BASELINE DOCUMENTATION**

The undersigned hereby acknowledge and agree that the Baseline Documentation for the \_\_\_\_\_ property in Flathead County, Montana, prepared by \_\_\_\_\_ of \_\_\_\_\_ and dated \_\_\_\_\_, is an accurate representation of the biological, physical and historical conditions of the subject property as of the date of grant of the Conservation Easement. All of the undersigned parties have received copies of the Baseline Documentation and is on file with the Bonneville Power Administration.

**Grantor: Montana Department Of Fish, Wildlife And Parks**

\_\_\_\_\_  
Name: Martha Williams, \_\_\_\_\_ Date  
Title: Director, Montana Department of Fish, Wildlife and Parks

**Bonneville Power Administration:**

\_\_\_\_\_  
Name:  
Title: Realty Specialist  
Bonneville Power Administration

\_\_\_\_\_  
Date

**APPENDIX D: DRAFT INTERIM SWIFT CREEK CONSERVATION  
EASEMENT MANAGEMENT PLAN (FOR FWP OWNERSHIP)**

**DRAFT**  
**INTERIM SWIFT CREEK CONSERVATION EASEMENT MANAGEMENT PLAN**  
**(FOR FWP OWNERSHIP)**

**I. INTRODUCTION**

The 3,180-acre Swift Creek property contains important habitat for native bull trout (federally listed as threatened) and westslope cutthroat trout within the Swift Creek drainage (Fig. 1). Both the Swift Creek and Lazy Creek drainages contribute to water quality within the entire watershed and within Whitefish Lake in particular. The goal of the Bonneville Power Administration (BPA) conservation easement on this property is to protect and improve, where possible, native fish habitat. BPA purchased this property for the Montana Department of Fish, Wildlife and Parks (FWP) and retained a conservation easement on it to serve as partial mitigation for the construction of Hungry Horse Dam and the associated loss of fish habitat. This management plan describes the Swift Creek property's resources as well as FWP's proposed management goals and objectives. These goals and objectives are consistent with the conservation easement held by BPA.

**A. Purpose**

The purpose of this interim management plan is to specify how FWP will manage this parcel to ensure long-term conservation of aquatic and terrestrial resources. This plan addresses habitat, public access, weed control, and other uses of the land consistent with the purpose of the BPA Swift Creek Conservation Easement. If restoration or other activities outside the scope of this plan are needed in the future, the plan will be updated based on public comment and subject to BPA approval.

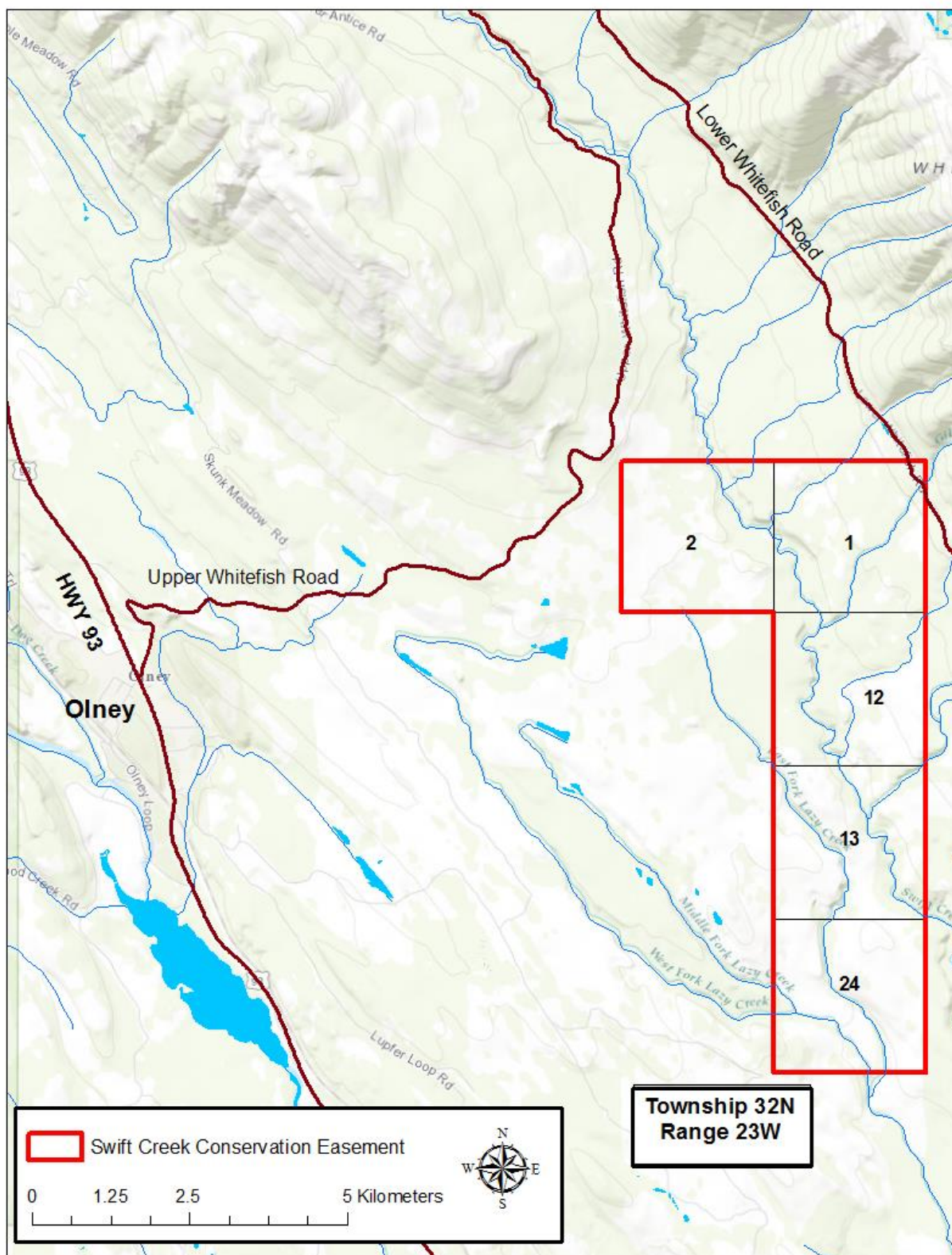
**B. Location**

The property is located approximately 9 miles northwest of Whitefish, MT, and is surrounded by the Montana Department of Natural Resources and Conservation (DNRC) land as well as Weyerhaeuser.

**C. Legal Description for the Swift Creek property:** Flathead County, Township 32N, Range 23W, Sections 1, 2, 12, 13 & 24

**D. Other Information**

Stream Kilometers: 13.8 km in Swift Creek watershed  
5.7 km in Lazy Creek watershed  
Drainage: Whitefish Lake Watershed



**Figure 1.** The 3,180-acre Swift Creek Conservation Easement located on five sections along the Swift Creek drainage within the Whitefish Watershed.

## **II. MANAGEMENT PLAN**

### **A. Current Property Conditions**

The property consists of forested valley bottoms and mountains that have been managed for commercial timber production for over one hundred years. Forestland dominates the landscape. It is a mixed conifer forest with all of Montana's commercial timber species represented, as well as important riparian and wetland species. The current forest has been harvested by the Plum Creek Timber Company, the former landowner who merged with Weyerhaeuser in 2016. Dominant species are Douglas-fir, western larch, true firs, Engelmann spruce, and western red cedar. Ponderosa pine, white pine, and lodgepole pine can also be found in most of the area. Cottonwood, alder, and aspen can be found along creeks and near wetland areas with unused forest roads filling in with these species as well. Some paper birch is evident along the streams and on north-facing slopes.

Because of past and ongoing weed management activities by Weyerhaeuser, there are only limited areas where noxious weeds are present; mostly occurring along existing roads on the project lands. Some of the species that are present include knapweed, Canada thistle, and houndstongue.

Currently there are no structures or development on the property. All roads on the property are forest management roads which are closed with either locked gates or are bermed to prevent general access. Public use has been limited to non-motorized during most of the year, with some winter-time use by snowmobiles. Due to such limited use, many of the roads are growing in with cottonwoods and alders and are impassible to vehicle traffic.

### **B. Goals for Future Property Conditions**

FWP will maintain the natural resource values of this property by protecting and improving fish and wildlife habitat while allowing compatible public recreation. The following goals relate to this desired outcome:

#### **Goal 1. Maintain fish and wildlife habitats by allowing natural hydrologic processes to occur.**

- Monitor riparian and stream conditions over time to assure that they remain at or exceed their current level of health.
- Enhance fish habitat and passage where needed and as funding allows. Any future stream restoration work would be subject to environmental analysis and public review and final approval by BPA.

#### **Goal 2. Minimize the presence of noxious weed species.**

- Conduct an initial inventory for any non-native plants and noxious weeds occurring on the property (which will be completed in the Baseline Report by July 2017). Based on the findings, develop a noxious weed management plan with Flathead County per state law.

- Control noxious weeds by spraying, pulling, and/or biological control as appropriate for the infestation and according to the noxious weed management plan developed with Flathead County.

**Goal 3. Monitor and maintain forest health and habitat values.**

- FWP will work with DNRC to identify any potential insect infestations and diseases that might affect forest conditions as well as to develop a fire mitigation plan for the forested portion of the property. These plans will need to be approved by BPA.
- During the fire season, FWP attends weekly fire conferences with county, state, and federal entities to discuss the current fire danger and assess appropriate actions relative to potential fire restrictions. These restrictions may include closure of the site to public use.
- There are numerous closed access and logging roads throughout these sections. Because these roads are barricaded to motorized vehicle use, they receive very little traffic so should require little maintenance over the next few years. The Baseline Inventory Report will identify any issues associated with roads or culverts that need more immediate attention. Areas contributing sediment to streams or other habitat degradation problems would be prioritized for improvements based on available funding and approval from BPA.

**Goal 4. Allow public uses that are consistent with the purpose of this acquisition.**

- Dispersed recreation such as hunting, fishing, bird watching, and hiking will be allowed. Mountain biking will be allowed only on the existing road network. Access will be from the neighboring DNRC land.
- No fires will be allowed.
- No motorized access to the property will be allowed.
- No camping will be allowed.
- If FWP finds significant grizzly bear use, FWP may temporarily close sections to public use during critical times of year.

**Goal 5. Conduct only those land management activities necessary to protect and improve fish and wildlife habitat. The BPA conservation easement only allows land uses that do not impair or impact the conservation values of the parcel.**

The following uses are generally prohibited by BPA's conservation easement. Some land management activities such as managing weeds, timber, or other vegetation can be allowed by BPA if the activity does not harm the conservation values of the property and are pre-approved by BPA in a management plan. At this time, FWP does not propose to allow any uses or undertake any management activities (other than weed management) listed below. If FWP proposes any future timber management or response to insect infestations that are different from what is defined by this plan, FWP will complete the appropriate management plan and prepare a draft EA for public review.

- Haying, and/or mowing;

- Altering of grassland, woodland, wildlife habitat or other natural features by burning digging, plowing, disking, cutting or otherwise destroying the vegetative cover;
- Dumping refuse, wastes, sewage or other debris;
- Harvesting wood products;
- Draining, dredging, channeling, filling, leveling, pumping, diking, impounding or related activities, as well as altering or tampering with water control structures or devices;
- Diverting or causing or permitting the diversion of surface water into, or out of the easement area surface by any means;
- Building or placing buildings or structures on the easement area;
- Planting or harvesting any crop;
- Grazing or allowing livestock on the easement area;
- Mining—excavation, dredging, or removal of soil, sand, gravel, rock, minerals or other surface or subsurface materials;
- Incompatible Uses—surface use except for such purposes necessary to preserve, enhance, restore or create wetlands and riparian resource functions and values;
- Acts Detrimental to Conservation—activities detrimental to conservation of the the following: fish and wildlife habitat, flood control, erosion control, water quality protection and enhancement, traditional cultural materials production, aesthetics, and low impact recreation; and
- Subdivision—subdivision of land into multiple independently platted parcels.

**Goal 6. Continue to monitor the property’s resource values and adjust management as needed in the future.**

The following FWP monitoring may occur in the future:

- Fish population estimates,
- Terrestrial and aquatic habitat quality evaluations,
- Bird surveys,
- Amphibian inventories,
- Monitoring grizzly bear or wolf populations, and
- Human use surveys.

FWP will modify or adjust this plan if monitoring indicates that public use, noxious weeds, stream hydrology, fire or some other event potentially alters or affects the conservation values and requires a change in management. FWP would first need to draft the revised management plan and complete a draft EA for public review prior to implementing new management activities on the land. Any such changes will also require BPA approval.

**C. Estimated Ownership and Management Costs**

The following is an estimate of the minimum annual costs to the BPA Fisheries Mitigation Program of the 3,180-acre Swift Creek property.

Annual Estimated Costs:

Property Taxes	\$ 4,200
Weed Management	\$ 4,000
Gate/Berm Maintenance	\$ 1,000
<b>Total</b>	<b>\$ 9,200</b>